Ombudsman/Alberta

Seventeenth Annual Report

FOR THE PERIOD OF JANUARY 1, 1983 TO DECEMBER 31, 1983

SYMBOL OF THE ALBERTA OMBUDSMAN

". . . he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds."

The Honourable
Chief Justice J.V.H. Milvain
Supreme Court of Alberta
January 6th, 1970

Ombudsman/Alberta

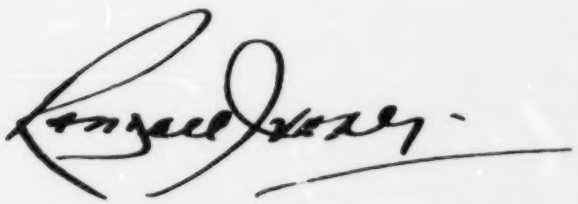
March 1, 1984

Dr. C. R. Elliott, MLA
Chairman
Select Standing Committee
on Legislative Offices
202 Legislature Building
EDMONTON, Alberta

Dear Dr. Elliott:

In accordance with the provisions of Section 27(1) of The Ombudsman Act, I herewith submit to you and through you, to the Legislative Assembly, the Seventeenth Annual Report of the Ombudsman for the Province of Alberta.

Yours very truly,



RANDALL E. IVANY
Ombudsman

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THE PAST

On May 1, 1974, I became the Ombudsman for the Province of Alberta. Now, 10 years later, I prepare to leave this office, and to turn over the increasingly important role of Ombudsman to the new choice of the Legislature.

It has been a fascinating decade, full of challenges which no one could have foreseen on that day when the Members of the Legislative Assembly honoured me with their nomination as the officer charged with the responsibility of investigating, in their name and on their behalf, complaints from citizens about the administrative workings of government.

When I submitted my first annual report, for the year ended October 31, 1974, I reported that the office had, since its inception, received and dealt with 5,467 complaints. With this report, I advise the Members of the Assembly that the Office of the Ombudsman for Alberta has now received and dealt with almost 15,000 complaints.

The number of complaints, whether for the year 1983 alone or as part of the 17-year total of this office, tells only part of the story. The mere numbers do nothing to reveal the anxiety felt by some of the people who wrote, the complexities of the issues which had to be investigated, the hours spent interviewing witnesses and poring over documents, or the satisfaction which comes from concluding an investigation, whether in favour of the complainant or not.

Some have suggested that the work of the office has become easier over the years, because we have gathered experience and can apply that to new complaints which we receive.

It is true that the past 17 years have allowed us to develop an expertise, but it is wrong to suggest that the cases which have gone before will do much to reduce the work which will be required to deal with the complaint received tomorrow. The Office of the Ombudsman cannot blindly apply precedents to cases which are being investigated.

Indeed, in my first annual report, I wrote that "rough justice" could not be accepted of government departments. I said that civil servants must go beyond the surface in an attempt to serve the citizens of the province. Each case has to be considered on its own merits — a trite phrase now much in use, but one which has a special meaning for a citizen who approaches his or her government.

Since I said that anything less was not acceptable from a department or agency of government, it follows that nothing less is acceptable for the Office of the Ombudsman.

Fairness, both to the citizen and to the government, requires that every case which is investigated is considered fully. Just because one case is decided in a certain way does not mean that every similar case can be decided in the same way.

One must also recognize that the complaints which are sent to me today reflect issues which are often far more complex than those which have been considered in the past. In part, this is a reflection of life generally. Certainly, I think we all believe that life is more complicated now than it was in years past. It also reflects, I think, the fact that much more information is required by government in dealing with a

request, and consequently, there is more information held by government than before, all of which must be reviewed in order to assure a complete investigation.

This need to consider each complaint independently of all others has been one of the challenges over the years, particularly since the number of complaints continues to grow. In 1983, the number of written complaints received which were within the jurisdiction of the Ombudsman increased 12 per cent, and this followed a 17.6 per cent increase in the workload in 1982.

But the challenge has been met, largely because of a dedicated staff and a willingness by elected officials and public servants to co-operate fully with the Ombudsman. Rarely have I had to resort to the formal powers of my office to obtain information. Indeed, far more often, I have found members of the public service pleased by the fact that the Ombudsman is reviewing a complaint. They, like the citizen whose complaint precipitates the investigation, have come to accept that the conclusion of the Ombudsman will be impartial and fair. That is not to suggest that they, or the citizen, will necessarily agree with my decision, but they generally accept the importance of the Ombudsman's function within a democratic society.

In my investigations involving just about every government entity, I have found Deputy Ministers, managers and public servants, as a whole, to be sensitive, honest and understanding. Recognition of the contribution made by public servants in Alberta is not always forthcoming, but I am quite prepared to say they are a fine group of professionals, doing the very best job they can.

Alberta is a better place to live because of their service to the public.

One of the most important challenges which I have faced daily is to remain loyal to the goals I established for the office. When I submitted that first annual report in 1974, I said that the office must maintain availability, flexibility and humanization. I believe that these goals have been met — not without a great deal of work and sometimes, frustration — but they have resulted in the further development of the first, and I think best, Ombudsman office in North America. I hope that my successor will adopt them, and continue to provide a high level of service to the people of the province.

There have also been challenges which have gone beyond Alberta's borders.

There was no way of knowing, in 1974, that Alberta would convene the first International Ombudsman Conference, bringing together these senior officials, most of whom had corresponded, but most of whom had never met. A number of my Ombudsman colleagues from around the world said there was an important need for a meeting which would allow Ombudsmen to discuss matters of mutual concern, and learn from one another. I was asked by them if I could convene such a meeting, and I agreed. During the process, I received great encouragement from officials of the province and this helped ensure the success of that first gathering.

Even during the conference, it was not apparent that Alberta would, one day, be seen by many as a sort of "Mecca" of Ombudsmanship. But today, Alberta is the home of the International Ombudsman Institute, and welcomes practising Ombudsmen, as well as academics, representatives of foreign governments and others who are interested in what is, in historical terms, a concept still in its infancy. While these visitors are in Edmonton, they naturally meet with me and my staff to learn more

about our operation. Although other offices may be larger, and handle more complaints, Alberta is still recognized as a pioneer, since it was here that the first North American Ombudsman was appointed.

While the challenges of the past 10 years have been fascinating, the next decade will bring new, and probably more difficult challenges. The days of simple problems and simple answers (if they ever existed) are gone, replaced by the complexities of living in the 1980s. Now, more than ever, there is a need for a strong Ombudsman, willing to urge justice for the citizen who has been wronged, and to support the administration when it is right.

There will be frustrations, perhaps even more than there have been during the past 10 years. There will be complaints which cannot, no matter how apparently meritorious, be investigated because there is a lack of jurisdiction in the Ombudsman to deal with them. There will be criticism that the Ombudsman is "always attacking the government," when in fact, the majority of investigations are concluded with a finding that there was no administrative error involved. These criticisms will come from those who do not bother to read annual reports, or to seek information, but instead rely on headlines for all of their knowledge. They will not accept that the Ombudsman cannot control what is reported, and what is not, and that often, the Ombudsman is also frustrated by the fact that a report, which is not critical of government, fails to get the same prominence as does a report that illustrates administrative failings.

Criticism — and the resulting frustration — will also come from those who either do not recognize, or cannot accept, the need for the Ombudsman to be independent and impartial, to be a progressive force for change when the need for change is identified. These will allege that the Ombudsman is "too big for his britches," or "is building an empire." The facts will not deter these detractors, and the Ombudsman will be alone, usually unable to respond.

Yet the new Ombudsman will find, as did I, that much of the frustration will dissipate when rules are changed so that they are more equitable, or when a citizen is satisfied with an explanation of why a public servant took a certain course of action, or when, as happens all too rarely, a citizen writes and says:

"Thank you for helping me."

AN IDEALIST - OR MORE?

Recently, the Prime Minister of Canada, in responding to the current report of the federal Auditor General, suggested that the Auditor General is a "perfectionist," and that it is his job "to scrape and find further faults."

The same criticism has been levelled at Ombudsmen, who are, in practice, "administrative auditors." Some feel that Ombudsmen will search until they find a problem, even if none exists. This is a simplistic attitude, and one which takes little notice of what the Auditor General or Ombudsman really does.

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There is no doubt that the structure of government is immense. Organizations, bar associations, medical associations, or a large conglomerate of corporations or other special interest groups, can make their point with government very easily.

If, however, an individual "takes on" the government, shouting out against some private grievance, his or her voice can be only a whisper and the contest is very unequal.

That is where the Ombudsman can be most helpful to assist the citizen, no matter what his or her state or position. If a person has a legitimate grievance, the Ombudsman can help balance the scales. The Ombudsman is no knight on a white charger, but rather, a pragmatic, mature helper who is dedicated to correcting what has been wrongly done. He tries to provide an equality that was lacking before.

There are some who ask what difference an Ombudsman makes. After all, they point out, the Ombudsman is not at liberty to express himself on everything and in every way.

Yet, by his presence and position, the right is claimed for him to adopt a liberal concept of his function, and sometimes to transcend the concept of legality, striving for the ideal — justice.

But some people still make comments about "idealism," as if having an ideal administrative structure in government is somehow a horrid, even scandalous, idea. It seems to me that there is absolutely nothing wrong in reaching for the ideal.

However, I also recognize that recommendations made by an Ombudsman or an Auditor General will be ignored if they fail to take into account practicalities. Although these "practicalities" cannot be accepted as an excuse for allowing bad administration to continue, the government is restrained by things such as money and laws.

Over the years, I have attempted, whenever I have made a recommendation, to balance the ideal with the practical. Particularly in my special reports, I have often met with the Minister or officials of a department affected, told them of what I hope to accomplish, and then worked with them to word my recommendation in such a way that it is both feasible and helpful to citizens of the province.

I suppose there are worse epithets than "idealist," but I am still left with the feeling that those who want to make that charge may well not know whereof they speak.

THE CAVANAGH BOARD OF REVIEW

In its report of October 20, 1983, the Cavanagh Board of Review commented at length on the methods, practices and effects of certain investigations by the Ombudsman into Child Welfare in this province and, in particular, the Ombudsman's Special Report into the Foster Care Program, submitted in 1982.

Some of the remarks in the report of the Cavanagh Board of Review were critical of the Ombudsman, and some ascribed improper motives to his investigations and recommendations. In making these comments, the Cavanagh Board of Review exceeded its jurisdiction and entered upon a course of action which is expressly prohibited by section 22(1) of *The Ombudsman Act*.

The Legislature, in passing that section, recognized that if the Ombudsman was to fulfill his mandate, and maintain the utmost confidentiality required by his office, the scope of public or other inquiries into his activities must be curtailed or, at least, confined to the most exceptional of circumstances.

The Ombudsman has been encouraged to respond to the criticisms of him and his office contained in the report of the Cavanagh Board of Review. To do so, however, would be to open the door to further inquiry and jeopardize the trust reposed in the Office of the Ombudsman by those who contributed to his investigations, the Legislature to which he reports, and the people of this province to whom he is accountable.

To respond at all would require a response in detail; a response in detail would require that confidences be disclosed. The result is that the Ombudsman is impotent to respond to these serious allegations, however frustrating that may be. The Legislature, in enacting section 22(1) of *The Ombudsman Act*, recognized that the Ombudsman is vulnerable in the manner which has surfaced in the report of the Cavanagh Board of Review.

All that the Ombudsman can do in these circumstances is to deny that he acted in any way improperly, or that his actions were responsible for the adverse affects attributed to them. The Ombudsman can do little more than repeat that at all times he, acting in the utmost good faith, was motivated by the same concern for improving the delivery of child care services in the province that inspired the Cavanagh Board of Review itself.

The Ombudsman can only reiterate that he stands by all of the recommendations which were made in his Special Report into the Foster Care Program. Indeed, he takes pride in the fact that five of the six recommendations from that report which were referred to the Cavanagh Board of Review, were accepted by that body in its report.

However, the Ombudsman must express regret that his office has suffered unnecessary and undue criticism. He adopts a statement used by his learned predecessor, Dr. George B. McClellan, after he was criticized by a government-convened inquiry. In the 1971 annual report of the Ombudsman, Dr. McClellan wrote:

> "There are no more difficult charges to defend one's self against, than charges of this nature. There is little a man can do but deny them, if he feels they are wrong, and a simple denial is of no real assistance in disarming such charges."

TOURS

When I was appointed, I felt there was a compelling need for the Ombudsman to make himself more accessible to those he was designated to serve. Ten years later, I feel the need still exists and, in fact, may be even greater.

Accessibility means more than being in an office, ready to answer telephone calls or letters. It means, in my view, being willing to meet with Albertans, wherever they are, and offering the services of the office.

In speaking with the Members of the Legislature who recommended my appointment as Ombudsman, I learned that they too felt that the Ombudsman should travel throughout the province. Even more encouragement came when I announced, in my first annual report, that I intended to regularly visit communities outside of Edmonton and Calgary.

Over the years, we have made these tours a part of our office procedure. I will go out, in the company of members of my staff, and meet with those who feel that they need the help of the Ombudsman. Often, the complaints presented to me on tour are not within my jurisdiction, but I can assist by referring the person to an individual or a body which may be able to help.

Invariably, people I see on these tours comment on how pleased they are that I have come to their community. Some say that they know they could have written a letter, or telephoned the office, but would rather sit down across a table, explain the problem, and see if I could help them.

Recently, there has been some criticism of these tours. Some people, including some Members of the Legislative Assembly, feel that the tours are used to "drum up business," and suggest that if people are not willing to write or telephone, then their complaint cannot be that serious.

The critics point to the fact that the office issues news releases and places advertisements announcing the fact that I will be visiting a community. This, they suggest, encourages people to complain.

I can assure anyone who is concerned that the Ombudsman does not need to "drum up business." There is more than enough work to keep him or her busy, without ever leaving the main office in Edmonton.

While tours of the province may result in the office receiving complaints it might not have otherwise had, that does not mean that the complaints do not have merit. Perhaps a citizen is not familiar with the role of the Ombudsman, or perhaps the citizen does not feel comfortable writing a letter. Whatever the reason, I do not believe that these people should be denied the assistance of the Ombudsman simply because they do not live in one of the two major cities in the province.

I do not accept that the news releases or advertisements, which simply announce my intended visit, are inappropriate. They are general in nature and I cannot see anything in them that encourages people to complain, any more than I believe that my letters to Members of the Legislature whose constituences I plan to visit encourage complaints.

These tours represent a service to those outside of Edmonton and Calgary. I believe it is an important service.

The dispute over whether tours should be held in the future will not be resolved during the few months I will remain in office, and it will be for my successor to determine their fate. Naturally, I hope that they will remain a priority for the office because, if they are dropped, not only will rural Albertans suffer, so also will the credibility of the Office of the Ombudsman.

JURISDICTIONAL ISSUES

As a general rule, I have had little difficulty in determining questions of my jurisdiction to investigate a complaint or to take other action under *The Ombudsman Act.*

In those cases where a department or agency has questioned my authority, the matter has usually been resolved, quickly and amicably, by discussions with the Attorney General, The Honourable Neil Crawford. I am grateful to Mr. Crawford for his willingness to meet with me and to become involved in candid and fruitful talks.

Yet there are times when honest disagreements exist and cannot be resolved. In 1983, three cases involved challenges to the Ombudsman's jurisdiction, and were not resolved by the end of the reporting year.

In one case, I began an investigation into a complaint against a person hired by the Attorney General's Department to conduct an investigation and prepare a report for the department's Amicus Curiae section. The investigation and report dealt with a matter involving the custody of a child. Serious allegations were made against this investigator, and I felt that they had to be resolved, one way or another. The Department of the Attorney General then questioned my authority to investigate the matter. When the issue could not be resolved informally, both the Attorney General and I retained outside legal counsel to prepare opinions. The opinions from the outside counsel contradicted one another, with the law firm I hired saying that I did have jurisdiction, and the law firm hired by the Attorney General saying I did not.

In another case, I began an investigation into a complaint of delay on the part of a government department. The department responded by saying that it had handled matters as expeditiously as it could, but that it was in a difficult position because the subject of the complaint had been referred to a quasi-judicial body, pursuant to the legislation that deals with this type of complaint. The body had reserved decision on the case for (at that time) more than nine months. A provincial court judge had been designated as the official to hear this case. While I accept that I do not have the authority to investigate the courts, I felt that in this case, I could look further, since the judge was not sitting in court, but in a different type of proceeding under a provincial statute. Before proceeding with the investigation, I consulted with the Attorney General, who referred the matter to his officials and, later, to outside counsel. The position taken by the Attorney General now is that I lack the jurisdiction to proceed further with the investigation because a judge, whether sitting in court or not, is beyond the authority of the Ombudsman to question.

Once again, this opinion differs from that I received from the outside counsel I retained.

This case has important implications for the Ombudsman. If the position adopted by the Attorney General is correct, it may well mean that if the government appoints a judge to head any department or agency of government, the Ombudsman may immediately lose jurisdiction over it.

I do have the option to submit both of these matters to the courts, for a decision on whether I have jurisdiction to continue the investigations. I have been, and remain, loathe to involve the courts, since it is a time-consuming and expensive proposition. Indeed, only once in the history of the office has the Alberta Ombudsman had to ask the courts for a ruling, and that case led to one of the leading judgements in the world on the authority of the Ombudsman.

In the above two cases, I do not believe that going to the courts is the appropriate response. Instead, I believe that it is for the Legislative Assembly to clarify what it wishes the Ombudsman — its officer — to do in cases such as this. I have, therefore, submitted summaries on these cases to the Select Standing Committee on Legislative Offices and asked the Committee to consider them, and recommend such amendments to *The Ombudsman Act* as are necessary to clarify this situation.

The final case involving a jurisdictional matter deals with the Mental Health Hospital Board responsible for operation of Alberta Hospital, Edmonton. During 1983, I announced my intention to begin regular inspections of Alberta Hospital, Edmonton and Alberta Hospital, Ponoka. I subscribe to the views held by Ombudsmen, academics and others that an Ombudsman must pay particular attention to the welfare of those who are involuntarily detained, including those persons who are formal patients under *The Mental Health Act*.

Following my announcement of these inspections, concerns were raised by Alberta Hospital, Ponoka about the frequency of them. I accepted those concerns and agreed to reduce the number of proposed inspections to two per year. During 1983, I did conduct one inspection of Alberta Hospital, Ponoka, and reported to the then Chairman of the Board that I had found all in order.

I advised Alberta Hospital, Edmonton of a proposed visit to that facility and was told that the Board was objecting to my authority to conduct an inspection. Eventually, I was advised that the Board had no objection to my going to the hospital if I was involved in an investigation, but felt that I could not conduct an inspection without first launching an investigation. This was a proposition which had never been put to me by any body over which I have jurisdiction, and it is a position with which I cannot agree.

A great deal of time was spent in dealing with communications between my office, the Board, and the Board's legal counsel and, unfortunately, there has been no resolution of the matter.

In early 1984, I met with the Chairman and a member of the Mental Health Hospital Board to discuss their concerns. They reiterated the position they had previously taken. When I delved beyond the legalities in an attempt to determine the reason for the objection, I was advised that the Board felt that the Ombudsman's inspections would be bad for staff morale. I was told that other government departments and agencies were visiting the hospital and conducting studies, and that the Board felt the staff should be allowed to get on with their jobs.

When I suggested to the Board members that there had been no problem with my inspection of Alberta Hospital, Ponoka, I was told that the Board of Alberta Hospital, Edmonton, wondered whether this was the "frosting on the cake," and whether future inspections would be conducted in the same way. There was some feeling, the Chairman said, that I would continue inspections "until I found something," and that "in a hospital as large as ours, you're bound to find something wrong."

Once again, I feel very strongly about this issue. I believe that the Ombudsman would be failing in his duty if he ignored formal patients at the hospitals. I was pleased to read, in January, 1984, that the Task Force on the Mental Health Act agreed with my position and recommended that the Ombudsman have the authority to act on behalf of all formal patients That report made specific reference to the Ombudsman's ability to conduct inspections as a safeguard for patients.

In this case, it seems to me that no clarification of the legislation is needed. Indeed, it seems to me that the legislation is very clear. As at the time of writing, I have not concluded whether this is a case which, despite my reluctance to do so, I should submit to the Court of Queen's Bench for a ruling.

FEDERAL AND MUNICIPAL OMBUDSMEN

For the last several years, my annual reports have repeatedly carried two calls.

One has been for the federal Parliament to create an Ombudsman with general jurisdiction over the departments and agencies of the Government of Canada. The other has been directed to the Alberta Legislature, and has urged it to give the Ombudsman for Alberta jurisdiction to investigate complaints against local government.

In this, my last annual report, I repeat these calls.

Like all other Ombudsmen in Canada, I receive telephone calls and letters from people who have problems with federal pensions, or the Unemployment Insurance Commission or Revenue Canada, or any of the myriad agencies created by the federal government. While I can, and do, refer these people to their Members of Parliament, or to other people or agencies which may be able to assist them, I must also tell them that there is no federal parallel to the provincial Ombudsman to whom they may turn.

The Government of Canada has created four offices which can help with specialized problems, but there is no official who can investigate all complaints against all branches of the federal government.

Such a position was recommended by a committee in 1977, and legislation was introduced that would adopt the committee's report. That legislation died on the Order Paper and has never been reintroduced. Apparently, the federal government does not consider the matter as a priority. I believe it is a priority to the citizens who cannot "take on" the bureaucracy alone. I join once again with my colleagues from across the country in calling for quick action on this issue.

Just as those with complaints against the federal government have no Ombudsman to whom they can turn, neither do those citizens who have grievances against local authorities. The number of complaints I receive about local authorities is large, and the problems diverse.

Opponents of granting the Ombudsman jurisdiction over municipalities say that local government is closer to the citizens, and councillors or aldermen or trustees can take up a complaint. That argument was not adopted by the Alberta Legislature when it created a provincial Ombudsman, and it should not be accepted in considering whether that provincial Ombudsman should be able to investigate complaints against municipalities.

There are also those who say that an Ombudsman should not be forced on municipalities, and if a local authority wants to create an Ombudsman, they should do so.

As I have stated in the past, I do not believe that it would be helpful — indeed, it may well be most detrimental — to have a plethora of Ombudsmen in the province. The job can be done, without a large increase in staff, by the provincial Ombudsman, and I see no point in "reinventing the wheel" in each municipality.

None of the proposals for municipal jurisdiction have involved "forcing" the Ombudsman on anyone. The proposals have all called for the Ombudsman to have authority in those municipalities which pass resolutions granting it.

The issue of municipal jurisdiction was debated again in the Legislature in 1983 and, like similar proposals in the past, it did not come to a vote. I hope that one day, the Members of the Legislature will see the importance, and the wisdom, of making the Ombudsman's services available to citizens with complaints against local authorities.

SELECT STANDING COMMITTEE ON LEGISLATIVE OFFICES

During the McCrimmon Committee's 1976 review of *The Ombudsman Act*, I recommended that some means be found to allow the Ombudsman to have regular consultation with Members of the Legislative Assembly, to whom he reports. The concept found favour, and the Select Standing Committee on the Auditor General and Ombudsman was created. Subsequently, the responsibilities of the Committee were enlarged and it is now called the Select Standing Committee on Legislative Offices.

I wish to extend my sincere appreciation to the two men who have served as Chairman of the Select Standing Committee since its inception, Mr. Bill Mack, the former Member of the Legislative Assembly for Edmonton Belmont, and Dr. C. R. (Bob) Elliott, the Member for Grande Prairie. Both Mr. Mack, during the last session of the Legislature, and Dr. Elliott, who currently chairs the Committee, have provided me with a great deal of advice and encouragement over the years.

I still believe that the Select Standing Committee has the potential to be of great assistance to the Ombudsman, and to the Legislature, by keeping open good lines of communication. Hopefully, members of the Committee will assist my successor by commenting on annual and special reports, and serving as a "sounding board" for the Ombudsman. The members of the Committee cannot, of course, do the work of the Ombudsman or, except in quite rare circumstances, tell the Ombudsman how to carry out the functions of the office, but the fact that the Committee can convey the Ombudsman's concerns to the Assembly does provide comfort to the Ombudsman, who can sometimes have the feeling of isolation.

Care must, of course, be exercised to avoid the temptation which has surfaced in other jurisdictions for the equivalent of the Select Standing Committee to become involved in the day-to-day operation of the Office of the Ombudsman. Such a course of action, in my view, can do irreparable damage to the relationship between the Ombudsman and the Assembly, as well as the relationship between the Ombudsman and the citizens of the province. In some places, we have witnessed public battles being waged between members of the legislature and the Ombudsman. While this does make for interesting headlines and stories, it seriously infringes on the time of the Ombudsman, who should exert most of his efforts doing what he is appointed to do — serve the public.

It is my hope that before 1984 comes to a close, the Alberta Select Standing Committee on Legislative Offices will seriously consider the suggestions I submitted in 1983 for amendments to *The Ombudsman Act*. Hopefully, these proposals, which were submitted as a result of my experience in office, will find favour with the Committee and the Assembly and will allow my successor to provide even better service to the citizens of Alberta.

"THE OMBUDSMAN AND THE ELECTED MEMBER"

In 1983, I was asked by the Commonwealth Parliamentary Association to prepare a paper on the relationship between the Ombudsman and Members of the Legislative Assembly. That paper was subsequently published in the Association's quarterly magazine, which receives worldwide distribution.

For those who may not have seen the article, I have appended it to this report.

I am sometimes concerned that some Members of the Legislature do not fully understand the role of the Ombudsman, and regard him as a competitor, or as an enemy of the government. I have never considered myself as either. I believe the role of the Ombudsman is, firstly, to investigate complaints made to him about the administrative workings of government and secondly, if he finds a complaint to be justified, to then — and only then — become an advocate on behalf of the complainant, seeking to remedy an injustice and to make the administrative part of government work better.

The Ombudsman does this on behalf of Members of the Assembly and, as noted in the article, I am gratified that some Members refer constituents to me for help. The Ombudsman should be seen as an additional resource available to Members of the Assembly to ensure better government for those who they, like the Ombudsman, serve.

INTERNATIONAL OMBUDSMAN INSTITUTE

As I mentioned earlier in these introductory comments, Alberta is in the forefront of world attention when one is discussing Ombudsmanship. The decision to house the International Ombudman Institute at the University of Alberta was an honour to the province, as was my appointment as Executive Director and Secretary to the Board of Directors.

Since my first involvement with Ombudsmen from around the world in 1974, I have maintained a great interest in what is happening to the concept internationally. With my colleagues on the Board of the Institute, I have tried to help further Ombudsmanship through sponsorship of research, through publications and through the development of educational programs, as well as through the very existence of the Institute — a resource centre for the gathering and dissemination of information.

I wish to extend my appreciation to the Alberta Law Foundation, the Province of Alberta and the Province of Ontario for the financial assistance they have given to the Institute.

I also wish to recognize the University of Alberta, its President, Dr. Myer Horowitz and its Dean of Law, Dr. Frank Jones, for the untiring support given to the Institute.

The Directors of the Institute, past and present, have been a source of inspiration throughout the years. I am grateful for their friendship, their encouragement and their devotion to Ombudsmanship.

The current Directors of the Institute are:

Mr. Ulf Lundvik; Stockholm, Sweden; Former Chief Parliamentary Ombudsman for Sweden; President.

Dr. Bernard Frank; Allentown, Pennsylvania; Past Chairman, International Bar Association Ombudsman Forum; Vice- President.

Dr. Randall Ivany; Edmonton, Alberta; Ombudsman for Alberta; Executive Director and Secretary.

Dr. Frank D. Jones, Q.C.; Edmonton, Alberta; Dean of Law, University of Alberta; Treasurer.

Mr. William P. Angrick II; Des Moines, Iowa; Citizens' Aide/Ombudsman for Iowa and President, United States Association of Ombudsmen.

His Honour, Judge Joseph E. Berube; Fredericton, New Brunswick; Ombudsman for New Brunswick.

Sir Cecil Montacute Clothier, K.C.B., Q.C.; London, England; Parliamentary Commissioner for Administration in England.

Mr. Robert Fabre; Paris, France; Mediateur of France.

Mr. Daniel Hill; Toronto, Ontario; Ombudsman for Ontario.

Mr. Per-Erik Nilsson; Stockholm, Sweden; Administrative Chief Ombudsman for Sweden and Chairman, International Ombudsman Consultative Committee.

The Honourable Justice Evan Rees; Port-of-Spain, Trinidad and Tobago; Ombudsman for Trinidad and Tobago.

Dr. J. E. Richardson; Canberra, Australia; Commonwealth Ombudsman for Australia.

The Honourable Justice Sir Moti Tikiram, K.B.E.; Suva, Fiji; Ombudsman for Fiji.

Dr. Jacques Vontobel; Zurich, Switzerland; Delegate for Complaints for Zurich.

Excellence and leadership are qualities, when properly used, that can benefit everyone. It is a great joy to share in such attributes with many people dedicated to building up the universal Ombudsman movement.

INTERNATIONAL BAR ASSOCIATION, OMBUDSMAN FORUM

In addition to my involvement internationally, my Solicitor, Mr. Alex B. Weir, serves as Chairman of the Ombudsman Forum of the International Bar Association.

The objectives of the Forum are to promote the Ombudsman concept worldwide and to provide an exchange of information and views of laws, practices and procedures relating to Ombudsmen.

The Forum has, on its own and in conjunction with the International Ombudsman Institute, sponsored seminars around the world in response to requests from bar associations.

To be even more responsive, the Forum is currently appointing Regional Directors in various areas of the world.

Mr. Weir is also deeply involved in arranging for the Forum's program to be presented at the next biennial conference of the International Bar Association to be held in September, 1984.

I have encouraged Mr. Weir's participation in the Forum and as Chairman. It is yet another example of why Alberta is so highly regarded among those who care about Ombudsmanship.

VISITORS

The Office of the Ombudsman for Alberta is always pleased to welcome visitors from other parts of Canada and around the world. Their presence allows us to discuss, at first hand, the workings of our office and to learn much about how the same type of work is accomplished in other offices. Over the years, I have obtained much useful information from other offices, some of which we have been able to implement, in one form or another, in Alberta.

During 1983, we were happy to welcome Mr. Ulf Lundvik, the President of the International Ombudsman Institute and former Chief Parliamentary Ombudsman for Sweden. My association with Mr. Lundvik, through the Institute, has helped me to appreciate even more the great contribution he has made over the years to the whole concept of Ombudsmanship.

I was very pleased that Dr. Jack Richardson, Commonwealth Ombudsman for Australia, was able to visit our office. Dr. Richardson is the first federal Ombudsman in Australia and his observations served to underscore the very real need for a federal Ombudsman in Canada.

Dr. Viktor Pickl, the Executive Director of the Office of the Ombudsman for Austria, spent some time with us during the year. His description of the work of the Austrian office gave us a great deal of information to reflect upon.

I was very happy to have the chance again to spend some time with Miss Inger Hansen, Q.C., Canada's Information Commissioner, and Mr. Ron Stewart, the federal Correctional Investigator, during their trips to Alberta. Miss Hansen, who has previously served as Correctional Investigator and Privacy Commissioner, has now embarked upon an exciting new challenge as the first official to deal with freedom of information legislation at the federal level. Mr. Stewart's observations on occurrences within the federal penal system often have great relevance to the work we do in provincial correctional institutions.

Visits by academics give us a chance to hear the views of people outside the Ombudsman system, but who have a very real interest in it. During 1983, I was pleased to welcome Dr. Leon Boim from Tel Aviv University, Dr. Deborah Shelton of the Victoria University of Wellington, New Zealand, and Mr. Joseph Puchta, a doctoral candidate at the Universitat Oldenburg in Germany.

The Office of the Ombudsman is also a stop on the orientation tour of Alberta's Legislative Interns. It was a pleasure to meet with the 1983-84 interns, and to engage in lively discussion with this group of very bright young people. In addition, I was happy to have a chance to meet with some of the 1982-83 Legislative Interns again, accompanied by their colleagues from Ontario and British Columbia.

STAFF

I wish to record my appreciation to the men and women who have served with me in the Office of the Ombudsman. They have shown a dedication and devotion which is rarely found today, and which in some cases, has extended over many years. Indeed, some members of the staff have worked in the office since 1968.

We have deliberately kept the staff small, and sometimes, the hours have been long and tedious. We have worked and travelled together, and it has been an exciting experience for me and, I hope, for them. Each one, from secretaries to managers, has given the best effort anyone could hope for, and all have constantly strived for excellence.

It is a privilege to have served with them. I am very proud of every one, and I know that they will serve my successor well, because they believe in the work the office is doing.

IN APPRECIATION

"No man is an island", the philosopher said, and the truth of that is proven by the many people who become actively involved in the work of the Ombudsman. From staff members in my office, to public servants in departments and agencies, to Deputy Ministers and Ministers, they are all interested in and participate in the work of the office.

One is always reluctant to begin listing individuals or even groups, for invariably, someone is omitted. Nonetheless, one must persevere, for omitting all would be unfair and would deny recognition to those who deserve it.

Naturally, I must thank the citizens of the province who brought their complaints to me. They have demonstrated a faith in me, and in the office, to act fairly. The most satisfying part of my job as Ombudsman has been in the day-to-day dealings with people from all over the province, from all walks of life. Even though in a majority of cases, the provincial administration is found to have acted properly, we have been able to resolve some inequities as a result of an investigation. Even where I do not support a complaint, I am pleased that most citizens are happy simply knowing that an impartial investigation has been carried out, or in obtaining a fuller explanation of why something was handled as it was.

I am grateful, too, to the public servants of Alberta, whose acceptance of the role of Ombudsman has made my job so much easier.

No recognition would be complete without a note of the pioneering work done by my successor, the late Dr. George B. McClellan. A man of valour, integrity and dedication, "George B.", as he is still affectionately known, soon became my friend and mentor. I began as an Ombudsman with a fine example before me.

There are four gentlemen who I feel I must mention by name in expressing my appreciation. These men have always provided their utmost support and encouragement to the Ombudsman and his staff and, on many occasions, have given the extra help needed to assist the complainant without going through the masses of red tape that can be put in the way.

Mr. J. Barry Martin, Deputy Minister of Consumer and Corporate Affairs, and Mr. Rheal J. LeBlanc, Deputy Solicitor General, have always been fair and just in their dealings with the office. They have not always agreed, but they have never hesitated to talk, to suggest alternatives, and to use their wisdom and sensitivity in solving problems. I have felt encouraged by them to negotiate and to go forward to help many people who have come to the office.

Mr. Roy Jamha is no longer the Chairman of the Workers' Compensation Board, but during his tenure, always made himself available. Our meetings together, and with the other members of the Board, were cordial, warm and frank. There was an openness with Mr. Jamha that was always welcome and unique. I am pleased to see that he will continue his association with the Board.

Mr. D'Arcy Coulson, the former Deputy Minister of Social Services, exercised a unique and beneficial ministry to his department and to the public in this province. A pastoral, intellectual and socially alert and sensitive person, he championed many progressive causes in the social life of this province in the short time he served. Truly a man ahead of his time, he never sought, in my view, to be controversial or given to anything but kindness and generosity. A man of intellect and integrity, with a strong analytical mind, he sought to steer a balance between affection and objectivity coming in, as he did, to a most difficult situation. That situation cannot be improved by his sudden leaving. I wish him well in whatever endeavour he chooses to apply his legion of talents. His departure is Alberta's loss.

THE FUTURE

As this section of the report began with a review of the past, so it ends with a consideration of the future. We must remember, all of us, that the past is merely prologue.

While an annual report may not be the best place to give advice to a successor, much of what I think the future holds involves many more people than the one who will take over as Ombudsman for the Province of Alberta.

I foresee that the number of complaints to the Ombudsman will continue to grow. We live now in difficult economic times, with uncertain predictions as to when a full recovery might come about. This has many implications for government and, consequently, for the Ombudsman.

Some programs which have existed up to now will be abandoned. Others will be introduced, either in response to demands from the citizenry, or as a result of the government's perception of what is needed in a particular area. Many of the current and new programs may be more selective than has previously been the case. Those who might have qualified at one time may find they are no longer eligible, and may seek the Ombudsman's assistance. Those who wish to take advantage of new programs may find more expected of them, and may not feel it fair.

Judicial interpretation of various sections of the Canadian Constitution could well have implications for the way certain matters are handled by public servants, and on the way the Ombudsman handles cases with which he is involved.

Much public attention is now focused on economic matters, some of it diverted from consideration of "social" issues. The years ahead will, I hope, result in a greater

balance, with people concerned about both the economy and the societal obligation to assist those who cannot, for one reason or another, survive on their own.

All of these things, if they come about, will be raised with the Ombudsman, in one way or another. In a province as diverse as Alberta, with such an exciting history and potential, it will be important for the Ombudsman to take sight of the role of an independent and impartial official of the Legislature. It will be mandatory to ensure that citizens of this province are not unfairly denied benefits, that they are treated as individuals, that they receive proper explanations of why things must be done in a certain way.

The Ombudsman must continue to transcend the narrow boundaries of legalities, and strive for justice, whether for the public servant who is wrongly maligned, or for the citizen who is entitled to expect a certain level of conduct by those who are elected or paid to serve him.

The people of the province who live outside the major cities will expect, indeed demand, that the Ombudsman be available to them. I already detect a concern that government is perceived as "too distant," and the Ombudsman must ensure that this can never be said of the office.

Most of all, the Ombudsman must be daring. He or she must never be afraid to review a certain area of the administration because it has never been done before. He or she must never accept, as a final excuse, the suggestion that things must be done in a certain way because they have always been done that way. Despite the protests of those who believe the Ombudsman has already gone too far, those who hold this office must be self-starters. When the need is there, an Ombudsman cannot be fearful of using the powers given, whether it is the authority to initiate an investigation on the motion of the Ombudsman, or the power to make recommendations for change. The Ombudsman must not be afraid of publishing a report if, to use the terms of *The Ombudsman Act*, it is "in the public interest or in the interests of any person or department or agency." If a department or agency has been publicly maligned, and the Ombudsman finds there is no substance to the charges, then the Ombudsman should say so. Similarly, if there has been a public uproar, and there is a need for changes, then the Ombudsman must be willing to say that publicly as well.

Some have said that the Office of the Ombudsman for Alberta has already gone far beyond what was contemplated by those who created it. I do not agree. A review of the debates leading to the creation of the Ombudsman saw wide-spread approval of the concept, and everything it entailed. That approval still exists among the governed, if not always among those who govern.

And it is the governed for whom the office was created, and for whom it must always be willing to act.

THE ALBERTA OMBUDSMAN'S OFFICE
ANNUAL REPORTS AND SPECIAL REPORTS

DR. G. B. McCLELLAN (1967-1974)

1st Annual Report (September 1st - December 31st, 1967)
2nd Annual Report (January 1st - December 31st, 1968)
3rd Annual Report (January 1st - October 31st, 1969)

1st Special Report (January 30th, 1970)
Dealing with Court Application to Determine Ombudsman's jurisdiction.

2nd Special Report (1970)
Request for Direction from the Legislative Assembly whether to submit or withhold a Report dealing with the complaint of R. J. Philipzyk.

3rd Special Report (1971)
A Supplement with Appendices, Correspondence, etc. on the above complaint of Mr. R. J. Philipzyk.

4th Annual Report (November 1st, 1969 - October 31st, 1970)
5th Annual Report (November 1st, 1970 - October 31st, 1971)
6th Annual Report (November 1st, 1971 - October 31st, 1972)

4th Special Report (1973)
Re: Escapes of Dangerous Patients from Alberta Mental Hospitals.

7th Annual Report (November 1st, 1972 - October 31st, 1973)

DR. R. E. IVANY (1974-)

8th Annual Report (November 1st, 1973 - October 31st, 1974)
9th Annual Report (November 1st, 1974 - October 31st, 1975)

1st Submission of the Ombudsman to the Select Committee, The Ombudsman Act, Alberta. (August 16, 1976).

Report of the Proceedings
First International Ombudsman Conference, Edmonton, Alberta.
(September 6th - 10th, 1976)

10th Annual Report (November 1st, 1975 - December 31st, 1976)

5th Special Report (May 30th, 1976)
An Inquiry into the Circumstances Surrounding the Riot at the Fort Saskatchewan Correctional Institution.

6th Special Report (December 13th, 1976)
The Ombudsman's Own Motion Investigation dealing with the Calgary Remand and Detention Centre.

11th Annual Report (January 1st - December 31st, 1977)

7th Special Report (August 1st, 1978)
Re Suicide at the Fort Saskatchewan Correctional Institution.

8th Special Report (December 1st, 1978)
Re Incidents at the Calgary Remand and Detention Centre.

12th Annual Report (January 1st - December 31st, 1978)

9th Special Report (January 1979)
Re Allegations of Racial Discrimination Contained in a Report of the Metis Association of Alberta. (A Ministerial Order to the Ombudsman from the Minister of Social Services and Community Health.)

10th Special Report (June 18th, 1979)
Re the Removal of Files from Metis Settlements.

11th Special Report (November 27th, 1979)
Re The Westfield Diagnostic & Treatment Centre.

13th Annual Report (January 1st - December 31st, 1979)

12th Special Report (March 26th, 1980)
Re Allegations Concerning the Excessive Use of Force by Correctional Officers at the Edmonton Remand Centre. (A Ministerial Order to the Ombudsman from the Solicitor General).

14th Annual Report (January 1st - December 31st, 1980)

13th Special Report (March 1981)
Re The Foster Care Program of the Department of Social Services and Community Health.

15th Annual Report (January 1st - December 31st, 1981)

14th Special Report (August 1982)
Re Allegations of Patient Abuse at Alberta Hospital, Edmonton. (A Ministerial Order to the Ombudsman from the Minister of Social Services and Community Health.)

15th Special Report (August 1982)
Re Death of Reginald McKinnon

16th Special Report (September 1982)
Re Investigation of a Complaint against the Social Care Facilities Review Committee.

16th Annual Report (January 1st - December 31st, 1982)

17th Special Report (February 1983)
Re Grant Lee Phillips

17th Annual Report (January 1st - December 31st, 1983)

STAFF OF THE OFFICE OF THE OMBUDSMAN

The Ombudsman
Randall Ivany — Ann Matthews - Secretary

Executive Assistant
Robert Wyatt

Assistants to the Ombudsman

Legal
Alex Weir — Donna Jones - Secretary
Lorraine Howard (Calgary Office)

Administration
Joe Pennett

Investigations
Diann Bowes
Ed Chetner
Jack Ratcliff
John Reid
Floyd Taylor
Ralph Toews (Manager - Calgary Office)

Support Staff
Bonny Kapty
Todd Lerbekmo
Anna Moline (Calgary Office)
Beth Staden
Lynn Warriner (Calgary Office)

MEMBERS OF THE SELECT STANDING COMMITTEE ON LEGISLATIVE OFFICES

Chairman
Dr. C. R. Elliott, MLA
Grande Prairie

Mr. D. L. Anderson, MLA
Calgary Currie

Dr. W. A. Buck, MLA
Clover Bar

Mr. A. P. Hiebert, MLA
Edmonton Gold Bar

Mr. J. E. Miller, MLA
Lloydminster

Deputy Chairman
Dr. D. J. Carter, MLA
Calgary Egmont

Mr. W. G. Notley, MLA
Spirit River-Fairview

Mr. W. F. Purdy, MLA
Stony Plain

Mr. J. M. Thompson, MLA
Cardston

BUDGETARY REVIEW

	MANPOWER COSTS	OPERATING COSTS	TOTAL BUDGET
1967 / 68	24,740.00	2,200.00	26,940.00
1968 / 69	55,980.00	12,975.00	68,955.00
1969 / 70	69,220.00	14,550.00	83,770.00
1970 / 71	107,598.00	20,450.00	128,048.00
1971 / 72	111,814.00	17,050.00	128,864.00
1972 / 73	127,339.00	20,000.00	147,339.00
1973 / 74	157,573.00	35,160.00	192,733.00
1974 / 75	191,529.00	36,500.00	228,029.00
1975 / 76	250,710.00	34,104.00	284,814.00
1976 / 77	276,640.00	41,100.00	367,890.00*
1977 / 78	335,449.00	54,316.00	389,765.00
1978 / 79	361,330.00	72,350.00	433,680.00
1979 / 80	386,033.00	78,040.00	464,073.00
1980 / 81	430,187.00	99,463.00	529,650.00
1981 / 82	544,623.00	132,195.00	676,818.00
1982 / 83	625,708.00	121,250.00	746,958.00

*Includes $50,150.00 Special Warrant for the First International Ombudsman Conference.

Leased accommodation for office space provided by the Department of Public Works, Supply and Services.

OPERATIONAL STATISTICS

The following represents a statistical overview of the work of the Office of the Ombudsman for the past year.

A. Complaints Received

Over the past 12 months, from January 1 to December 31, 1983, a total of 1025 written complaints was received. The number of written complaints which were directed against departments or agencies of government within the Ombudsman's jurisdiction increased 12 per cent. Over the same period, 2129 oral inquiries were recorded during visits to my office, through telephone inquiries or as a result of interviews which were conducted.

Oral Inquiries

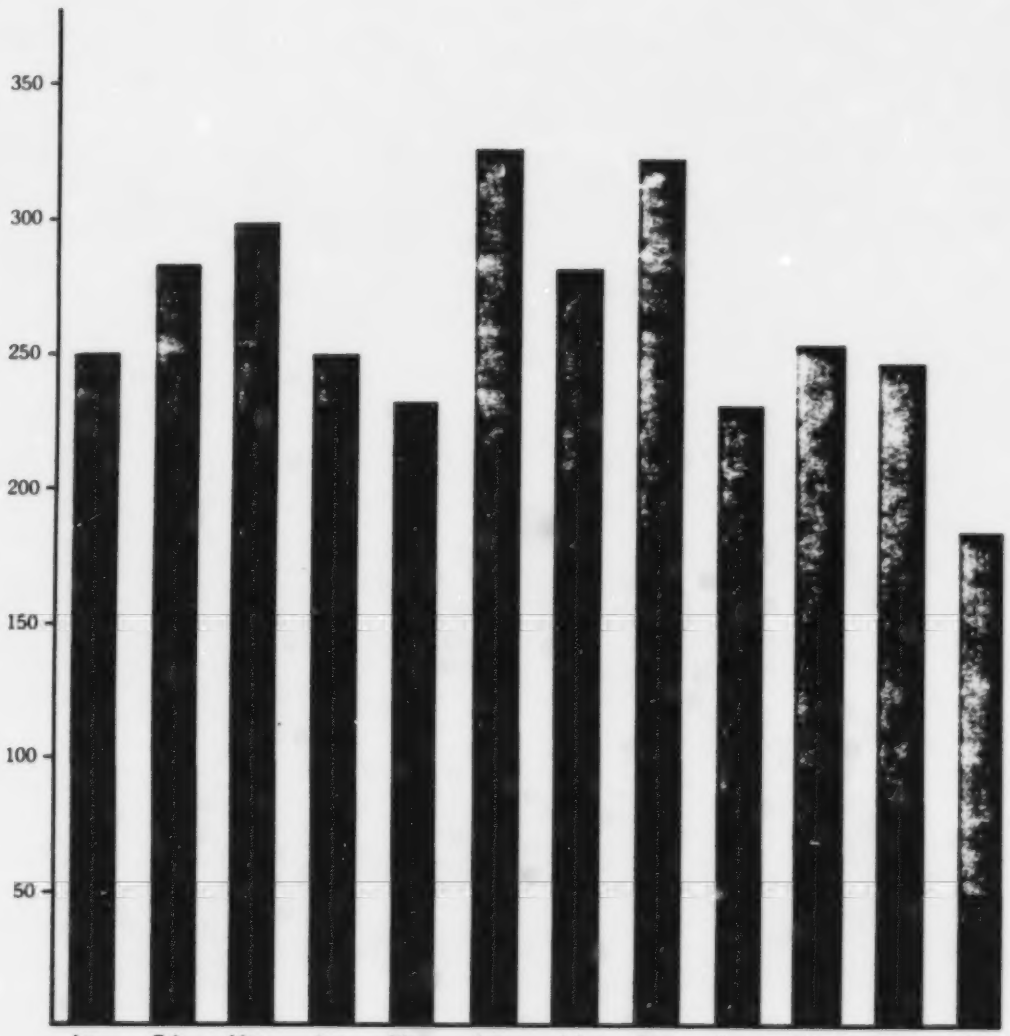
Section 13(1) of *The Ombudsman Act* requires that complaints to the Ombudsman must be made in writing. Yet, each year, the office receives oral complaints and inquiries on a variety of issues and concerns. Most would not fall within my jurisdiction as Ombudsman, even if they had been submitted in writing. In each case, an effort is made to try to assist the citizen to the best of our ability.

This past year, 2129 oral inquiries were made. This marks an increase of 4.3 per cent over the total reported in 1982.

Although no investigations were undertaken on such inquiries, pursuant to Section 13(1) of my Act, where it appeared that a matter fell within my jurisdiction, the complainant was informed of the requirement that complaints be made in writing. Often, written complaints were received. In certain circumstances, where no letters followed, inquiries were made of the complainant in order to be of assistance. As has been the practice of this office, the requirement that complaints be made in writing was not allowed to be a burden to those who, for various reasons, are unable to write their own letters. Positive efforts are made to assist this small number of persons.

Total Complaints Received Per Month

(January 1, 1983 through December 31, 1983)



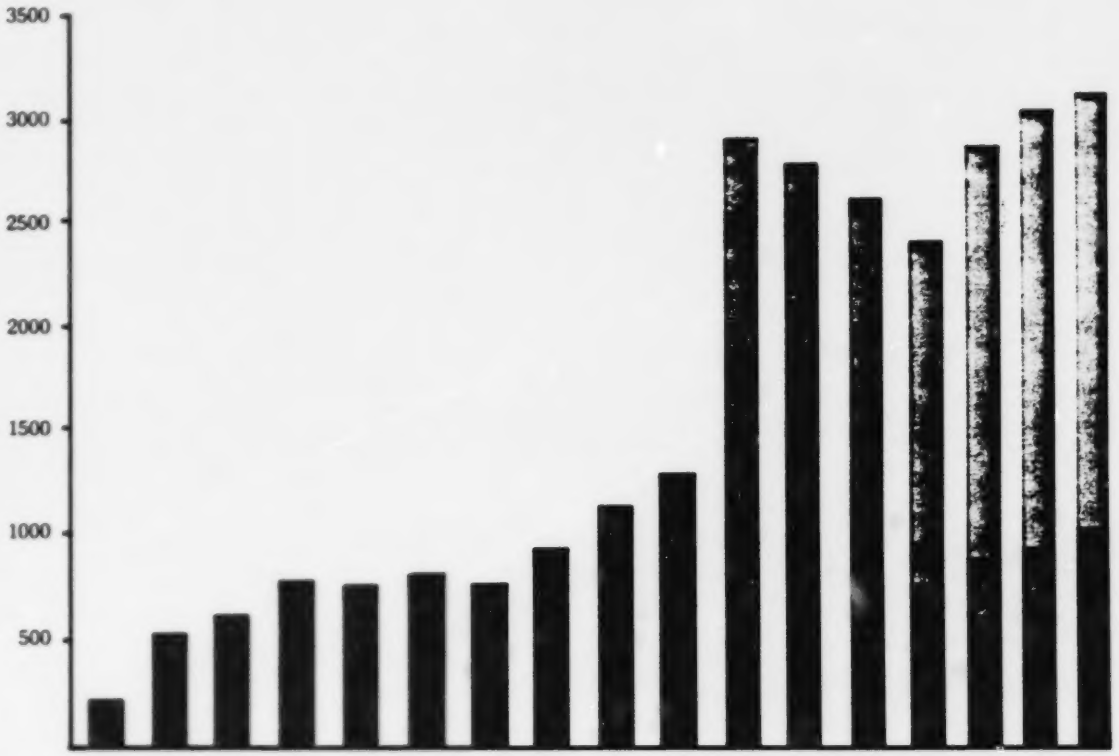
	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sep	Oct	Nov	Dec
Written	98	97	99	89	60	109	106	99	67	68	83	50
Oral	152	187	199	161	174	214	174	220	165	188	165	130
Total	250	284	298	250	234	323	280	319	232	256	248	180

Written Complaints —

Oral Complaints —

Total Complaints Received Per Year

(1967 through 1983)



	1967*	1968	1969*	1970	1971	1972	1973	1974	1975	1976*	1977	1978	1979	1980	1981	1982	1983
Written	216	535	627	791	774	815	776	933	1141	1293	1010	1010	823	783	834	981	1025
Oral	—	—	—	—	—	—	—	—	—	—	1889	1766	1800	1612	1947	2041	2129
Total	216	535	627	791	774	815	776	933	1141	1293	2899	2776	2623	2395	2781	3022	3154

* Note: Reporting years have changed over the history of the office.

1976 — Reporting year covers the 14 month period November 1, 1975 through December 31, 1976.

1969 — Reporting year covers the 10 month period January 1, 1969 through October 31, 1969.

1967 — Reporting year covers the 4 month period September 1, 1967 through December 31, 1967.

Written Complaints —

Oral Complaints —

Total Complaints Received

Including oral inquiries, 3154 complaints were received in 1983. This represents an increase over 1982, when 3022 complaints were reported.

	Written Complaints	Oral Complaints	Total Complaints
Directed against departments and agencies of the Alberta government	832	1025	1857
Directed against bodies and organizations beyond the Ombudsman's jurisdiction (including private matters, local authorities, and other governments)	193	1104	1297
TOTALS	1025	2129	3154

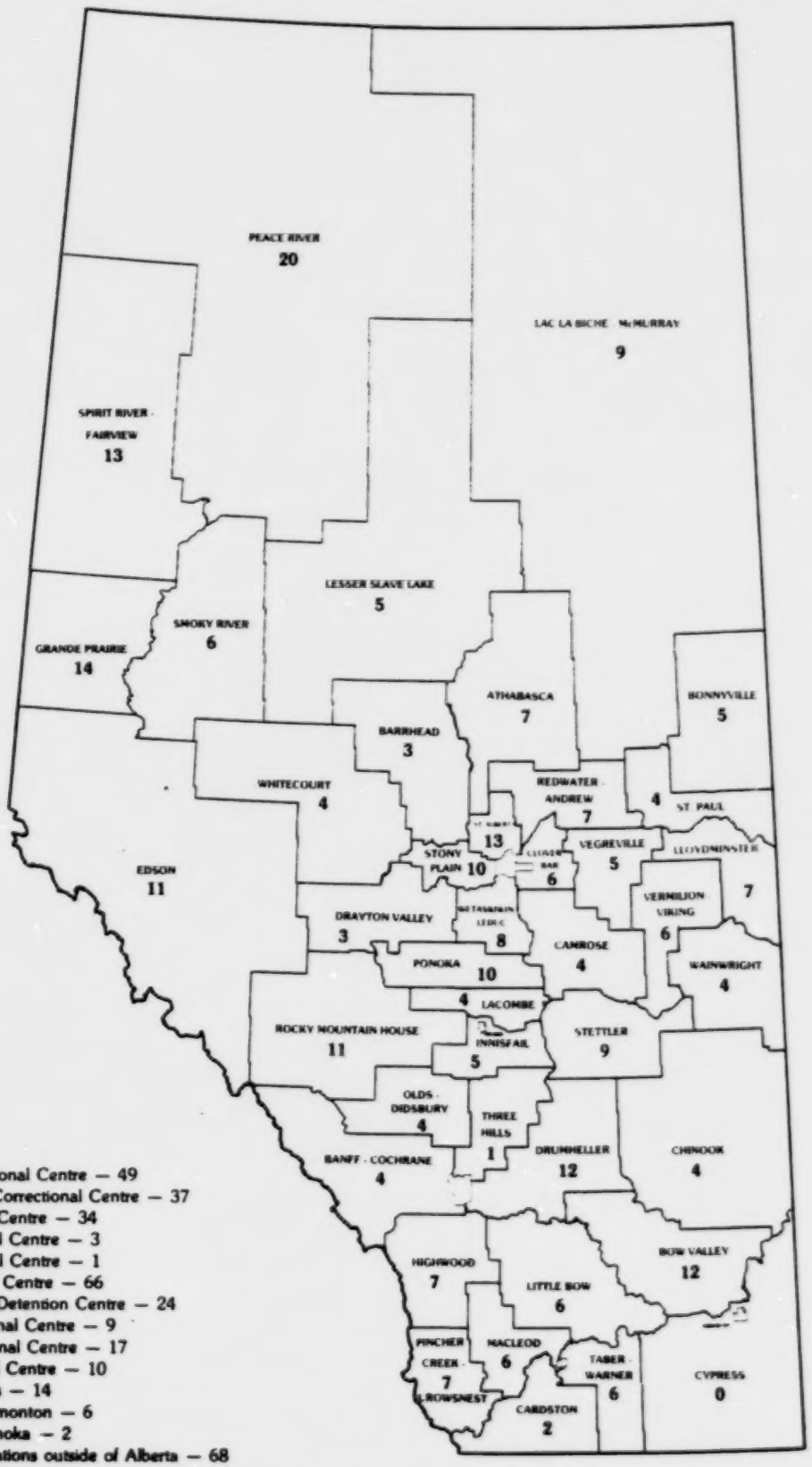
Comparison of Non-Jurisdictional Categories

The accompanying table illustrates a comparison of complaints directed against agencies or authorities beyond the Ombudsman's jurisdiction. It must be noted that not all of the 832 written complaints involving provincial government departments and agencies are ultimately found to be within my jurisdiction and investigated. Many in fact are declined for various reasons.

Year	Municipalities Cities and other local Authorities Written / Oral	Federal and other Governments Written / Oral	Private Matters Written / Oral	Courts of Law Written / Oral	Universities, Colleges & Hospitals Written / Oral
1967	12	11	33	12	—
1968	30	28	81	33	3
1969	33	24	114	45	3
1970	29	32	151	64	5
1971	24	46	150	4	4
1972	49	35	138	40	4
1973	34	38	118	36	3
1974	56	48	157	44	5
1975	54	72	196	51	7
1976	75	69	181	40	7
1977	46/205	64/263	136/645	38/85	2/7
1978	36/137	62/246	106/624	28/55	2/6
1979	39/142	52/217	93/577	33/79	4/7
1980	30/155	41/179	98/540	25/61	0/5
1981	28/161	48/211	94/652	13/64	2/8
1982	39/134	48/256	121/675	18/81	0/6
1983	32/154	31/238	82/529	17/60	7/43

Geographical Origin of Complaints

The map accompanying this section notes the place of origin of written complaints received for the year by provincial Electoral Districts. Those from Edmonton, Calgary, Red Deer, Lethbridge, and Medicine Hat are grouped and presented as totals for the urban areas. Complaints from various institutions and from outside of the province are presented separately.



URBAN AREAS

Edmonton — 164
Red Deer — 19
Calgary — 182
Medicine Hat — 14
Lethbridge — 22

INSTITUTIONS

Peace River Correctional Centre — 49
Fort Saskatchewan Correctional Centre — 37
Edmonton Remand Centre — 34
Belmont Correctional Centre — 3
Nordegg Correctional Centre — 1
Calgary Correctional Centre — 66
Calgary Remand & Detention Centre — 24
Bow River Correctional Centre — 9
Lethbridge Correctional Centre — 17
St. Paul Correctional Centre — 10
Federal Penitentiaries — 14
Alberta Hospital, Edmonton — 6
Alberta Hospital, Ponoka — 2
Complaints from locations outside of Alberta — 68

B. Cases Handled

Files carried over from previous years	96	
Written complaints received in the 1983 reporting year	1025	
TOTAL: Cases handled		1121
Files concluded without investigation	500	
Files concluded after investigation	488	
TOTAL: Files concluded for all reasons		988
Files under investigation as of December 31st, 1983		133

There are several reasons why an investigation of a file is not ordered. The complaint may involve a matter which is a policy decision, rather than an act of administration which the Ombudsman is allowed to investigate. Sometimes, the complainant has not utilized available avenues of appeal and, in those cases, the complainant is advised of how to go about launching such an appeal. The door is always left open for a complainant to submit a complaint after all appeals are completed if he or she still feels the victim of an injustice. In addition, a number of complaints involve levels of government or private matters which are outside the Ombudsman's jurisdiction.

The total number of complaints received in 1983 — including both written and oral complaints — was the highest figure ever recorded by the office. The number of written complaints was the highest since 1976.

Summary of Dispositions

During the reporting year, January 1 through December 31, 1983, 988 files were concluded for all reasons. Our closing dispositions were as follows:

		1983 cases
Declined (No Jurisdiction)	No Assistance Possible	273
	Assistance Rendered	6
Declined (Discretionary)	No Assistance Possible	209
	Assistance Rendered	12
Discontinued (No Jurisdiction)	No Assistance Possible	15
Discontinued (Ombudsman)	No Assistance Possible	28
	Assistance Rendered	2
Discontinued (Client)	No Assistance Possible	15
Unsupported	No Assistance Possible	284
	Assistance Rendered	26
Partially Justified	No Assistance Possible	9
	Assistance Rendered	1
	Partially Rectified	22
	Rectified	21
Justified	No Assistance Possible	5
	Assistance Rendered	1
	Rectified	59
	TOTAL	988
Total cases disposed of		988
Cases under investigation at December 31, 1983		133
	TOTAL	1121

Summary of All Written Complaints Received to December 31, 1983

Total written complaints received	14,367
Total written complaints concluded after investigation	5,811
Total written complaints justified	1,619
Justified complaints as a percentage of complaints concluded after investigation	27.9%

C. Statistical Summary of Files Concluded in This Reporting Year

The charts which follow present numbers of complaints and their dispositions for each of the various branches, divisions, or tribunals within individual departments, and for various agencies. Similar summaries are presented for areas beyond my jurisdiction. In each case, the total number of oral complaints received against departments, agencies or various non-jurisdictional areas is also noted.

Certain files may involve more than one branch within a department, or indeed, more than one department. An effort has been made to designate complaints against the department or agency primarily involved.

The number of cases shown under the heading of "Files concluded in 1983" and under the various dispositions includes cases carried over to 1983 from the previous year.

	Advanced Education & Manpower	Students Finance Board	Agriculture	Agricultural Development Corp.	Hail & Crop Insurance	Alberta Terminals	Attorney General	Public Trustee	Crime Compensation Board	Public Utilities Board	Consumer & Corporate Affairs	Small Business & Farm Interest Shielding Program	Alberta Opportunity Company	Economic Develop	Research
Oral Complaints Received	6	12	7	7	1	1	34	11	2	0	17	1	6	0	1	2
Written Complaints Received	2	4	13	11	1		39	13	3	1	19	0	1	0	1	1
Total	8	16	20	18	2	1	73	24	5	1	36	1	7	0	2	3
Files Concluded in 1983	4	4	13	8	1		41	15	3	1	17		1	1	1	1
Files Carried Forward to 1984				4			5				5		1	0	1	
Declined — No Jurisdiction — No Assistance Possible			2	1			3	1			2					
Declined — No Jurisdiction — Assisted																
Declined — Discretionary — N.A.P.	1	1	1	1			5	1	1		7					
Declined — Discretionary — Assisted		1	2				1	1								
Discontinued — No Jurisdiction — N.A.P.							2	1								
Discontinued (Omb.) — N.A.P.				1			5	1		1						
Discontinued (Omb.) — Assisted											1					
Discontinued (Omb.) — Part. Rectified																
Discontinued (Omb.) — Rectified																
Discontinued (Client) — N.A.P.				1			1				1					
Discontinued (Client) — Assisted																
Unsupported — N.A.P.		1	7	4	1		14	6	1		6		1		1	1
Unsupported — Assisted							2	2								
Part. Justified — N.A.P.	1															
Part. Justified — Assisted														1		
Part. Justified — Part. Rectified			1					1								
Part. Justified — Rectified																
Justified — N.A.P.							2									
Justified — Assisted							1									
Justified — Part. Rectified																
Justified — Rectified	2	1					5	1	1							

...ncil	...ture	Education	ACCESS	Teachers' Retirement Fund	Environment	Energy & Natural Resources	Public Lands & Wildlife	Housing	Alberta Housing Corporation	Alberta Home Mortgage	Mortgage Interest Relief	Hospitals & Medical Care	Alberta Mental Hospitals	Alberta Health Care Insurance	Manpower	Labour	Employment Standards Branch	Labour Relations Board	Human Rights Commission	Workers' Health, Safety & Compensation	Workers' Compensation Board	Municipal Affairs
4	1	0	7	4	8	9	5	17	10	7	16	31	6	4	17	1	5	3	191	7
7	2	1	13	4	20	4	5	9	6	5	17	16	2	1	9	1	6	5	117	7
11	3	1	20	8	28	13	10	26	16	12	33	47	8	5	26	2	11	8	308	14
5	2	1	10	9	15	6	4	10	7	4	16	13	1	1	8	1	3	4	106	4
2			5	1	5		2			1	1	3	1		1		3	1	23	4
		1			1		1	3		1	2	2		1	2		1		35	1
																		1	2	
2	1		2		2	1	1	2		1	8	3			1	1	1	1	11	
			1	1	1				1										1	1
			1		1					1	1								2	
																			1	
																			1	
1			4	7	8	5		1	5		4	2	1		3		1	1	38	1
											1	2			2				6	
				1	1			1										1		
1	1		2		1														5	
												1							1	
1							2	3	1	1		3							3	1

	Assessment Appeal Board	Local Authorities Board	Alberta Planning Board	Personnel Administration	Treasury	Treasury Branches	Alta. Gov't Pensions Board	Recreation & Parks	Utilities & Telecommunications	Alta. Gov't Telephones	Social Ser
Oral Complaints Received		1		4	6	11	1	8	2	34	302	3
Written Complaints Received		1	3		4	5	8	5	6	18	104	1
Total		2	3	4	10	16	9	13	8	52	406	4
Files Concluded in 1983	1	1	2		4	3	7	4	6	18	104	1
Files Carried Forward to 1984			1			2	1	2		4	17	
Declined — No Jurisdiction — N.A.P.							1	1	1		16	
Declined — No Jurisdiction — Assisted												
Declined — Discretionary — N.A.P.						1	3	2			23	
Declined — Discretionary — Assisted									2		1	
Discontinued — No Jurisdiction — N.A.P.			1								4	
Discontinued (Omb.) — N.A.P.										4	3	1
Discontinued (Omb.) — Assisted												
Discontinued (Omb.) — Part Rectified												
Discontinued (Omb.) — Rectified												
Discontinued (Client) — N.A.P.											3	
Discontinued (Client) — Assisted							1					
Unsupported — N.A.P.	1		1		2	1	1	1	2	10	35	
Unsupported — Assisted							1			1	2	
Part. Justified — N.A.P.											1	
Part. Justified — Assisted												
Part. Justified — Part. Rectified					1	1					3	
Part. Justified — Rectified		1			1						4	
Justified — N.A.P.											2	
Justified — Assisted												
Justified — Part. Rectified												
Justified — Rectified									1	3	7	

AADAC	Solicitor General	Alberta Liquor Control Board	Motor Vehicles Branch	Correctional Services	Transportation	Public Works, Supply & Services	Disaster Services	Executive Council	Energy Resources Conservation Bd.	Officers of the Legislature	Cities & Municipalities	Federal & Other Provinces	Private Matters	Courts of Law	Requests for Assistance	Universities, Colleges and Hospitals
10	9	29	111	16	13	2			2	154	238	529	60	80	43	
4	9	18	252	19	6	1		2		32	31	82	17	24	7	
14	18	47	363	35	19	3		2	2	186	269	611	77	104	50	
11	6	16	240	19	6	2	1	2		32	31	82	17	24	7	
	3	2	26	3	2			1								
			3	2						30	31	81	17	23	7	
										2		1				
1		2	117	2	1									1		
			3	1												
				1												
		2	4													
			7													
9	6	5	69	11	3	2										
		1	3	1			1	1								
			2					1								
			4		1											
			12													
		1			1											
1		5	16	1												

CASE COMMENTS

DEPARTMENT OF THE ATTORNEY GENERAL

83-1400-22 **Justified - Rectified**

A man wrote to the Ombudsman complaining of difficulties he was having in recovering bail monies that he had posted on behalf of someone charged with a criminal offence. The money had been returned to the accused person, instead of the complainant.

During the course of this investigation, it appeared that there were some inconsistencies involved in the recording of details as to the person who actually posted bail and this could, as in this case, result in the money being given to someone other than the legitimate owner.

As a result of this complaint, the department reviewed its policy and issued new directives to its officials.

The department refunded the complainant's money, after he signed a document which will give the government the authority to attempt to recover it from the accused person.

OFFICE OF THE PUBLIC TRUSTEE

83-1404-1 **Justified - Rectified**

Under provincial law, if a person dies and beneficiaries cannot be found, the estate goes to the Crown and is administered by the Public Trustee who can recommend payment if an heir subsequently comes forward.

The complainant in this case wished to open a business which would seek out possible heirs. He had unsuccessfully approached the Public Trustee and the Department of the Attorney General to obtain a listing of estates where no heirs had been found.

As a result of the Ombudsman's intervention, the Public Trustee, the Deputy Attorney General and officials of Alberta Treasury thoroughly reviewed the case, and concluded that there should be annual listings in the Alberta Gazette of all estates for which heirs had not been located.

This decision completely satisfied the complainant, and should be of assistance to other Albertans as well.

83-1404-7 **Partially Justified - Rectified**

A woman complained that her brother's financial affairs were not being properly administered by the Public Trustee. The brother is the subject of an order under *The Dependent Adults Act*. The complainant also said that she had received a completely inappropriate letter from an official in the Public Trustee's office in response to her inquiries on behalf of her brother.

The Ombudsman's investigation satisfied him that there was no substance to the allegation that the Public Trustee's handling of the estate was, in any way, improper

or other than in the best interests of the complainant's brother. However, the Ombudsman agreed that the letter complained of was in bad taste. The matter was drawn to the Public Trustee's attention, and an apology was promptly sent to the complainant.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

82-1600-8 **Unsupported - No Assistance Possible**

The complainant in this case had experienced some financial difficulties and had decided to sell his farm machinery in order to pay his debts. He consigned his machinery to an auction market. The equipment was sold but the auction market failed to pay the complainant. When information on this problem and similar incidents came to the attention of the Department of Consumer and Corporate Affairs, the licence of the auction company was suspended. Ultimately, the company was fined and its two principals were sentenced to terms of imprisonment.

As there were a number of persons victimized by the auction company, claims were settled on a pro-rata basis among all claimants. In the case of the complainant, his equipment was sold for more than $30,000, yet his pro-rata share of the proceeds amounted to less than $1,500.

The complainant wrote to the Ombudsman criticizing the government for requiring that auction companies only be bonded in the amount of $10,000. That amount was later increased to $25,000.

During the course of this investigation, bonding requirements were discussed with department officials as it seemed users of the auction sale business may have been acting with a false sense of security based on statements in advertisements by auctioneers that they were licensed and bonded.

The difficulties of bonding were explored by the department, which determined that the disclosure of the amount of the bond might, in fact, lead the public into a false sense of security. However, the department has taken positive steps to reduce consignor vulnerability by requiring trust provisions for all monies received and non-release of goods until satisfactory payment arrangements have been made.

The new administrative procedures adopted by the department greatly improve the situation. The production of an informational brochure relating to provincial business licences, permits and registrations should also be helpful to the public.

The Ombudsman advised the complainant that the bond amount of $10,000 had been fixed by Ministerial Order and not through an administrative act or decision by officials of the department. Regrettably, the Ombudsman was unable to be of any direct assistance to the complainant.

83-1600-31 **Declined 14(1)(a) - No Assistance Possible**

The complainant in this case requested an investigation into the actions of the Alberta Securities Commission in refusing to allow a company to purchase the business of an Alberta mortgage broker which was facing financial difficulties. The complainant felt that this refusal led to the mortgage firm being placed into receivership, and the future of her $25,000 investment being very uncertain.

In declining to conduct an investigation, the Ombudsman considered an earlier complaint which involved another mortgage brokerage firm. That case involved an allegation that certain government officials had not taken the proper steps to ensure the viability of the firm. When the Ombudsman made initial inquiries to consider his position in that case, he learned that the government had been named as a defendant in three separate court actions. He also learned that other investors in the same position as the complainant had hired a lawyer to protect their legal positions.

The Ombudsman concluded that given the serious legal issues involved, this matter was not one in which an investigation under *The Ombudsman Act* was appropriate. He felt that the courts were the proper forum to determine whether or not the provincial administration was negligent in its duties.

DEPARTMENT OF EDUCATION

83-2200-3 **Justified - Rectified**

A boy was expelled from school by a local school board. His mother appealed the expulsion decision to the Minister of Education who, in turn, appointed a committee to review the case and report to him. After receiving that report, the Minister upheld the expulsion. The mother then wrote to the Ombudsman.

While the Ombudsman does not have the authority to investigate actions of municipal authorities, such as school boards, nor does he have the jurisdiction to review decisions made by Ministers of the Crown, he is given the power to review information which is provided to a Minister. Since the mother's allegations included charges that the committee had failed to properly review the evidence against her son, the Ombudsman began an investigation into the actions of the departmental committee.

Following that investigation, the Ombudsman had very real concerns that an injustice might have been done. Indeed, one of the members of the committee had told the Ombudsman that their review of the case had been limited to the question of whether rules enacted by the school board, as well as the provisions of *The School Act*, had been observed. He frankly said that had the committee thought it had the authority to look beyond the procedural aspects of the case, its report may have been quite different and may, in fact, have supported the student's appeal.

Having reached these conclusions, the Ombudsman had to consider what recommendation he could usefully make. He realized that there was little point in suggesting that the Minister reconsider the case, since more than a year had passed from the time of the original expulsion. In addition, the Ombudsman felt that he had to be concerned not only with rectifying this case, but also with suggesting means of avoiding similar cases in the future.

The Ombudsman submitted three recommendations to the Minister of Education. The first was designed to deal with the complainant's specific case. The Ombudsman recommended that a copy of his letter, setting out his conclusions and the reasons for them, be placed on every file held by the Department of Education involving the case. The recommendation went on to suggest that the Minister request that the school board involved do the same thing. In this way, the Ombudsman indicated,

anyone reviewing the file of the case would be aware that there were some serious questions about the whole matter.

The other two recommendations were designed to improve the administrative process of the department in dealing with appeals from expulsion decisions. Since the department is currently considering possible revisions to *The School Act*, the Ombudsman recommended that consideration be given to including a full appeal process for students who were expelled, similar to the type of appeal which is available to a teacher who is dismissed. The Ombudsman further recommended that until *The School Act* is amended, committees appointed to report to the Minister on expulsions be advised that they are expected to go beyond procedural questions.

The Minister fully accepted the first two recommendations and agreed with the third recommendation in principle, subject to certain conditions. The Ombudsman is satisfied that even with those conditions, a more equitable appeal procedure will be available to students who find themselves in this unenviable position.

83-2200-8 **Justified - Rectified**

Sometimes, the Ombudsman need not proceed far with an investigation, but can resolve a complaint by acting as a facilitator, bringing the parties to a dispute together to resolve the problem themselves.

In this case, an employee of the Department of Education felt that a comment made on his performance appraisal was discriminatory. He had waited some time before raising the issue, and he was no longer able to submit a grievance through his union.

On the Ombudsman's instructions, an assistant arranged for a meeting between the complainant and department officials, and the matter was quickly resolved by substituting a different phrase for that used on the initial appraisal.

HEALTH OCCUPATIONS DIVISION

82-4400-301 **Justified - Rectified**

A husband and wife approached the Ombudsman with a novel and very complex complaint. Both of the complainants had held registration as psychiatric nurses in the province for more than seven years. When they sought registration in another province, questions were raised as to whether they met the qualifications for psychiatric nurses. The matter was reviewed by the Advisory Board appointed under *The Psychiatric Nurses Training Act*, which revoked their certificates. Legal confrontations arose but, in the end, the certificates remained cancelled.

The Ombudsman's view of the evidence was different than that of the Advisory Board. However, when the Ombudsman indicated he was prepared to recommend reinstatement of the registrations, the Advisory Board indicated it was not prepared to accept such a recommendation. Although the Ombudsman is authorized to send a refused recommendation to Cabinet, he felt it more important to find some way of assisting the complainants immediately.

The Advisory Board did not disagree that special steps should, perhaps, be taken in this case and with its help and that of the Registrar of Health Occupations, a number of avenues were explored.

Finally, everyone involved agreed that extraordinary arrangements would be made for the complainants to take a refresher course in psychiatric nursing, and they would then be allowed to write the provincial examinations for psychiatric nurses. If they are successful in these examinations, their registrations will be restored.

DEPARTMENT OF ENERGY AND NATURAL RESOURCES

83-2600-2 **Partially Justified - No Assistance Possible**

A tradesman in the central part of the province wrote complaining of the manner in which his bid on a government contract had been handled.

The complainant had been present when the bids were opened and was pleased to learn he was the lowest bidder. He was told that a contract had not been prepared and the department would be getting back to him.

Based on this remark, the complainant assumed he had been awarded the contract. He ordered the additional material he would need to complete the job, and made arrangements to rent extra equipment. Payment was not made for the material or equipment at that time, but there were certain expenses involved in making the arrangements.

A few days later, the complainant was informed that the contract had been awarded to someone else, whose bid was only very slightly higher.

Following an investigation, the Ombudsman agreed with the department that there were valid reasons for accepting the higher bid. Nonetheless, the Ombudsman was concerned that the remark which had been made when the bids were opened was inappropriate. The department agreed that more caution would have to be exercised by its officials involved in this type of case.

The Ombudsman was prepared to suggest reimbursement of the complainant's out-of-pocket expenses, but the complainant did not, despite repeated requests, provide proof of those expenses.

83-2601-21 **Partially Justified - No Assistance Possible**

A farmer approached the Ombudsman with concerns relating to the grazing lease he had held with the Department of Energy and Natural Resources since 1962.

The grazing land in question was originally owned by the federal government and administered by the department. In 1974, the land was transferred to the province on the understanding that it would be re-transferred to the Bow River Irrigation District. That latter transfer took place in 1977. However, the Lands Branch of the Alberta Department of Energy and Natural Resources was never notified. Consequently, the Lands Branch continued to issue annual grazing permits to the complainant.

Neither the complainant nor the Irrigation District questioned the status of the land until a petroleum company began drilling operations in the area during 1982.

Farmers who hold grazing lease permits from the Department of Energy and Natural Resources are entitled to negotiate compensation in such cases. That right does not exist if the permits are issued by the Irrigation District, which does its own negotiations.

It was when the complainant entered into negotiations that the earlier error was discovered.

The Ombudsman learned that the fee charged to the complainant by the department for his grazing permit was half of that which would have been charged, had the permit been issued by the Irrigation District, as it should have been. It was also established that the complainant retained ownership of the fences he had erected, and other improvements he had made.

Accordingly, while the Ombudsman agreed that the department had erred in handling the matter, it was not appropriate to make any recommendation on behalf of the complainant.

HEALTH CARE FACILITIES REVIEW COMMITTEE

83-3200-5 **Justified - Rectified**

A citizen complained to the Ombudsman that the Health Care Facilities Review Committee had acted improperly in issuing a report about his father without first consulting him.

The complainant's aged father was a resident of a nursing home in the province. The complainant had applied for and been granted an order of guardianship pursuant to *The Dependent Adults Act*. Among the powers granted to the complainant by the court order was the authority to decide with whom his father could consort.

There was a dispute as to whether a third party should be allowed to visit the complainant's father. In the past, difficulties had arisen as a result of such visits, and the complainant had instructed the nursing home officials that this person should not be allowed to visit. This third party then made a complaint to the Health Care Facilities Review Committee, which conducted an investigation and issued a report which suggested the person be allowed to visit the complainant's father.

The evidence before the Ombudsman satisfied him that the committee had acted with the best possible motives in trying to resolve a difficult situation. However, the Ombudsman advised the committee chairman that he thought the complaint was justified. The committee had said that it did not interview the complainant because he was out of the country. However, the Ombudsman stated that such an interview, given the legal situation of the complainant as a court-appointed guardian, should have been conducted, especially after the committee was advised that the complainant would have been willing to return home earlier than he had planned.

The Chairman thanked the Ombudsman for his review of the case, and noted that the committee had obtained further information about *The Dependent Adults Act* from the Public Guardian and would seek information as well from the Public Trustee.

DEPARTMENT OF HOSPITALS AND MEDICAL CARE

ALBERTA HEALTH CARE INSURANCE DIVISION

83-3202-22 **Justified - Rectified**

A couple wrote to the Ombudsman, worried that they would be ruined financially because Alberta Health Care had declined to pay bills, amounting to more than $17,000, from an American hospital.

The couple's daughter had been admitted to a psychiatric hospital in the United States. The hospital's policy was that no patient could be admitted unless there were assurances that the bills would be paid. As a result, hospital administrators contacted the Alberta Health Care office, and held a conversation with a clerk. That conversation led the officials of the hospital to believe that the services of both the hospital and the attending doctors would be paid.

However, when the bills were sent to Alberta Health Care, the division indicated it would cover only the charges submitted by the doctors. It said that it did not accept responsibility for hospitalization in a psychiatric institution.

The Ombudsman's investigation into this case was extensive, and included several telephone interviews of officials of the American hospital, and officials of Alberta Health Care. At the end of the investigation, the Ombudsman concluded that on a balance of probabilities, he believed that the U.S. hospital was, in fact, told that its charges would be paid for by Alberta Health Care.

The Ombudsman submitted his conclusions to the Deputy Minister of Hospitals and Medical Care, indicating that he had tentatively decided that the complaint was justified and, barring any further information from the department, was prepared to recommend that the full amount of the bill be paid.

The Deputy Minister immediately initiated a full review of the case and subsequently advised the Ombudsman that all of the bills would be paid.

The complainants were, of course, overjoyed, and the Ombudsman was very grateful for the consideration of the Deputy Minister of Hospitals and Medical Care.

83-3202-13 **Justified - Rectified**

The complainant turned to the Ombudsman as a result of being embroiled in a dispute over premiums he was alleged to owe for health care insurance. The dispute led to cancellation of coverage for the complainant, his wife and child.

Since the complainant was not living in Alberta for most of the 10 years involved in the dispute, he did not feel that he owed the division any money. The Deputy Minister of the department advised the Ombudsman that there was no record of any correspondence from the complainant indicating he was not a resident of Alberta during that time. However, based on the information which the complainant had provided, the department was able to recalculate the premiums and reinstate health care coverage.

83-3202-10 **Justified - Rectified**

After receiving a court summons for unpaid medical bills, the complainant wrote to the Ombudsman.

The complainant had moved to another province in late 1981, but had arranged to maintain her Alberta Health Care Insurance coverage until the end of February, 1982. During this period, she incurred several hundreds of dollars of medical bills, which were refused by the division.

During the Ombudsman's investigation, the division staff and one of the Ombudsman's assistants fully reviewed the account, resulting in payment of all but a small

portion of the bills which had been submitted. The Deputy Minister of Hospitals and Medical Care wrote a personal letter to the complainant, extending the department's apologies for the problems the complainant had encountered.

DEPARTMENT OF HOUSING

ALBERTA HOUSING CORPORATION

82-3001-7 **Justified - Rectified**

A nine-year-old dispute between an architect and the Alberta Housing Corporation was resolved after the Ombudsman's intervention.

In 1973, the architect was retained by the corporation in connection with a project. While his fee was paid, the architect received no payment for his travel time or that of his consultants. The architect alleged that he had been assured he would receive payment for this expense which he calculated as amounting to more than $20,000, although nothing was written into his contract about this. The corporation took the position that since there was no contractual obligation, it would make no payment.

The Ombudsman's investigation confirmed that a former senior official of the corporation had promised the architect that a formula would be used to calculate payments for the travel time, but because of a dispute between the corporation and the complainant, no such formula was ever written into the contract.

The Ombudsman held a meeting with all parties involved in the dispute, and concluded that, in fairness, some payment should be made by the corporation. While he felt the amount claimed by the architect was high, he believed that a compromise figure put forward by the corporation was low. The Ombudsman ultimately recommended that a payment of $12,000 be made in full satisfaction of the complaint. The corporation accepted the recommendation and a cheque was issued to the architect.

DEPARTMENT OF MUNICIPAL AFFAIRS

83-3600-8 **Justified - Rectified**

Some complaints are resolved when complainants are reassured that they have no cause to worry.

A couple in the southern part of the province had applied to purchase a section of land they had leased from the Crown. The sale had been approved, but was being delayed. A community organization had been given part of the land, and was seeking more. The complainant felt that he would have to pay several hundred dollars for a legal survey before he could go through with the purchase.

Upon this matter being brought to the attention of the department, the complainants were reassured that they were not going to be held responsible for a legal survey. In addition, the department was attempting to expedite the matter by meeting with the community organization.

DEPARTMENT OF PUBLIC WORKS, SUPPLY AND SERVICES

83-5000-4 **Partially Justified - Partially Rectified**

Tough economic times took their toll on the Contract Services Branch of the Department of Public Works, Supply and Services, as the Ombudsman learned from this investigation.

A firm which was a sub-contractor declared bankruptcy. As is allowed by provincial legislation, the firm filed a claim with the department, but complained that there was inordinate delay in receiving any funds.

The branch told the Ombudsman that there had been an astronomical increase in the number of such claims submitted. Officials said that this was very definitely tied to the downturn in the provincial economy. Delays were caused because the branch was not equipped to deal with the large number of claims it was receiving. In this particular case, there were also problems making sure that all claims had been registered before any money was disbursed.

The Ombudsman was satisfied that the branch had taken steps to deal with the increased workload, and that future delays would be minimal.

83-5000-9 **Unsupported - No Assistance Possible**

A former employee of the department complained to the Ombudsman that he had been improperly dismissed. The reason given for the termination was "position abandonment." The complainant argued that he was recovering from an injury, and that he had made adequate attempts to keep the department advised of his developments.

Following his investigation, the Ombudsman did not agree with the complainant. He found that the man had failed to contact the department regularly, and had not made certain calls he had been advised to make. In addition, the department had made attempts to contact the complainant, who had left the province without informing his supervisors.

Under the circumstances, the Ombudsman felt there were more than sufficient grounds to dismiss the complainant.

83-5000-13 **Justified - No Assistance Possible**

A student complained that he had been improperly dismissed from his job as a part-time janitor with the department. The reason given for his dismissal was that he had gone on holidays without letting his supervisor know when he would be returning. The supervisor then hired someone else to replace the complainant.

An investigation led the Ombudsman to conclude that the student probably had, in fact, told his supervisor when he would be returning from holidays. The Ombudsman therefore considered the complaint about the dismissal to be justified. However, the Ombudsman declined to make the recommendation sought by the complainant for payment of wages that he would have earned. The Ombudsman felt that the department had met its obligation to the student by offering him alternate employment, which the student turned down.

83-5000-12 **Unsupported - No Assistance Possible**

The complainant wrote to the Ombudsman alleging that the department's Purchasing Branch was influenced politically with regard to tenders that were placed concerning the purchase of certain items.

The complainant's firm was the lowest bidder in response to a tender for these items. Subsequently, the tender specifications were changed and the item re-

tendered. The complainant alleged that the change resulted from political interference in the tendering process and that the department had used dishonourable tactics in deciding who would be awarded the contract involved.

The Ombudsman's investigation found no evidence to support these serious allegations. The guidelines and procedures were closely examined and were found to be proper and fair in all respects. There was no evidence that there had been any improper actions on the part of any officer or employee of the department, or that there had been any political interference in the case.

DEPARTMENT OF SOCIAL SERVICES AND COMMUNITY HEALTH

82-4400-256 **Justified - Rectified**

One of the most time-consuming and complex cases during 1983 followed the decision by department officials to refuse a day care centre operating licence to the complainant.

The woman, in complying with directions from department officials as to structural and other requirements, spent thousands of dollars renovating premises she had leased for the centre she wished to open. While she was doing so, she did not know that a department employee working with her was raising concerns as to whether the woman was a fit person to be granted such a licence, even if she complied with all of the requirements. These concerns were brought to the attention of more senior officials in the department, but were never raised with the complainant.

When all of the necessary renovations were made, and structural approvals had been obtained from municipal and provincial authorities, the department refused to grant the licence on the grounds that the complainant was not fit to operate a centre.

The Ombudsman retained an independent psychiatrist to report on the question of the complainant's fitness. The report indicated that the psychiatrist found no reason to be concerned about the complainant.

The Ombudsman also reviewed information the department had obtained from third parties, and found that some of the information was less than accurate.

The complainant exercised her right to appeal the refusal. The appeal board ruled, primarily on the basis of the psychiatric report provided by the Ombudsman, that the woman should be granted a temporary conditional licence. However the decision failed to recognize that the complainant had, by then, lost the leased premises. She had spent so much money on renovations that she was no longer able to pay the rent. As a result, the appeal decision was of no practical benefit to her.

Two issues were of major concern to the Ombudsman. First of all, he felt the department officials should have been more candid with the complainant. He stated that when the concerns about the woman's fitness were being raised, the issue should have been explored more fully and resolved prior to the complainant being given directions for further, expensive renovations. The Ombudsman felt that because this had not happened, the complainant had suffered a severe financial hardship, and indicated that he felt an *ex gratia* payment of $7,500 should be made to the complainant. This sum, arrived at after careful examination of documentary

evidence, would reimburse the complainant for out-of-pocket expenses she faced for renovations which were of no value to her.

The second issue the Ombudsman raised with the department was the question of the legal authority to refuse the complainant the licence. After reviewing the legislation and regulations governing this matter, the Ombudsman said that he found no provision that an applicant for a day care centre licence had to demonstrate that he or she was fit to operate a facility. The Ombudsman went on to say that he thought that such a requirement should be contained within the legislation, and recommended amendments that would accomplish this.

Both proposals were accepted by the Minister. The complainant received the payment of $7,500 and the Minister and his officials are currently determining the precise wording of the necessary amendments. To this end, officials of the department have met with the Ombudsman's assistants to ensure that the problem is fully resolved.

83-4400-167 **Justified - No Assistance Possible**

This case is one of a very few in which a recommendation from the Ombudsman to a Minister was declined.

The complainant operates an itinerant ministry in northern Alberta. He unsuccessfully applied to the Director of Vital Statistics for registration under *The Marriage Act*, allowing him to solemnize marriages, and then submitted a complaint to the Ombudsman.

The Director of Vital Statistics advised the Ombudsman's assistant that the complainant's application for registration as a clergyman under *The Marriage Act* was refused because he did not have a regular congregation of a certain size, and because he was not affiliated with a "mainstream" church. When the complainant then sought registration as a Marriage Commissioner, this was refused because the complainant wanted to use a religious form of ceremony.

The Ombudsman took the position that the department was being too rigid in its application of policies requiring that a clergyman have a certain number of regular parishoners. This, in the Ombudsman's opinion, failed to recognize the whole concept of an itinerant ministry. The Ombudsman also advised the department that he was satisfied, from the evidence of other clergymen in the area, that the complainant's ministry was fulfilling a need of the community. He also said that other clergymen in the area were in a better position than the department to judge whether the complainant was a *bona fide* clergymen, and noted that these other ministers were supporting the complainant in his bid for registration.

The Ombudsman advised the Deputy Minister of the Community Health Division, who is responsible for the Vital Statistics Branch, that he thought the department's position was unreasonable. The Deputy Minister reviewed the case and upheld the decision of the Director of Vital Statistics.

The Ombudsman then formally recommended to the Minister that the complainant be registered as a clergyman. The Minister declined to accept the recommendation. The Ombudsman concluded that this was not an appropriate case for him to submit to the Lieutenant Governor in Council, despite the fact he still believes the complainant is right.

82-4400-314 **Partially Justified - Partially Rectified**

A woman who had been a ward of the former Department of Child Welfare came into possession of a letter written by an official of the department at the time she and her siblings were apprehended in the late 1950s. The letter stated that the parents had been jailed at the time their children were apprehended. The complainant said this was not true, and she wanted the letter destroyed.

The Department of Social Services and Community Health had investigated the issue, but had been unable to find people who could have provided corroborative information. The Ombudsman's assistant to whom this case was assigned was able to find some of these people, and it was established beyond doubt that the letter was in error.

While the department had offered to provide the complainant with a letter of apology, the Ombudsman agreed with the complainant that only destruction of the letter would resolve the matter. After being advised that the Ombudsman was prepared to recommend this step, the department obtained approval from the Public Records Committee for the destruction.

83-4400-149 **Justified - Rectified**

A 12-year-old girl, upset by the divorce of her parents, called the Child Abuse Hotline and told the social worker there that she did not want to live with either her mother or her father. A social worker went to see the girl at her mother's home immediately, and apprehended the girl as a child in need of protection.

The girl's father complained to the Ombudsman that there was no evidence that the child needed the department's protection, and that the social worker should have turned the child over to him, the father, rather than apprehending her.

The father complained that he had incurred expenses for a lawyer and a consulting social worker because the department insisted on applying for temporary wardship of the girl. That application was eventually withdrawn by the department.

Officials of the department agreed that there was some question as to whether the apprehension, and subsequent court proceedings, were necessary and agreed to reimburse the complainant for the social workers' fees, which amounted to several hundred dollars.

83-4400-231 **Justified - Rectified**

In this case, a mother complained about the supervision given by a social worker to her son, who was a temporary ward of the Crown, staying at a residential shelter.

The complainant said that her son faced a criminal charge as a result of the social worker not providing close enough supervision.

After the complaint was brought to the attention of the department, the social worker involved voluntarily withdrew from the case, and a new social worker took over responsibility for the boy's care. This action was enough to satisfy the complainant.

DEPARTMENT OF THE SOLICITOR GENERAL

ALBERTA LIQUOR CONTROL BOARD

83-4601-7 **Unsupported - No Assistance Possible**

The Ombudsman did not agree with the contention of this former casual Board employee that he had been dismissed for what amounted to harmless "horseplay."

The Ombudsman's investigation concluded that the final incident leading to the complainant's firing occurred when he and another employee attempted, or appeared to attempt, to place a supervisor in a box-crushing machine. The Ombudsman concluded that this incident, in itself, would have been enough to justify the dismissal.

The complainant said that the other employee involved had not been fired, but had been "laid off." He felt he should receive the same treatment. The Ombudsman again did not agree, concluding that the complainant's work record was considerably worse than that of the other employee. The Ombudsman dismissed the complainant's contention that previous warnings about disruptive behaviour should not have been considered at the time of his dismissal, because a new store manager had not indicated there were any problems. The Ombudsman felt that any warnings the employee received should have been enough to alert him that there were concerns about his future employment.

82-4601-8 **Justified - Rectified**

This case, reported in detail in the 1982 annual report, involved a businessman who could not obtain a liquor licence, because he was not a Canadian citizen. As a result of an investigation, the Ombudsman advised the Solicitor General that he felt the regulation requiring Canadian citizenship was improperly discriminatory. The Solicitor General undertook to review the matter.

Early in 1983, the Ombudsman was pleased to learn that the regulation had been amended, to provide that a liquor licence could be issued to a person who was a Canadian citizen or a landed immigrant. This amendment to the regulation fully resolved this complaint.

CORRECTIONAL SERVICES DIVISION

82-4600-37 **Unsupported - No Assistance Possible**

A former correctional officer complained that he was wrongly being deprived of benefits because of the failure of department officials to deal properly with his claim that he had been injured while at work.

The complainant said that he had been blinded when an inmate at a correctional centre threw something in his face. The department took the position that no such accident occurred.

The Ombudsman's investigation was complicated by the fact that the complaint was not registered until three years after the alleged incident. During this time, there were many personnel changes, witnesses were unable to accurately recall details, and some records could not be found.

However, the Ombudsman concluded that there was no evidence to support the complainant's allegations. Persons he had named as witnesses told the Ombudsman that they were not even employed by the department at the time of the alleged incident. The records of the doctor who, the complainant said, treated him after the incident indicated that the doctor had not seen the complainant for more than a year before that date. There was some independent evidence which tended to disprove the complainant's allegations. One such piece of information was an accident report, showing that the complainant had been driving a motor vehicle about six months after he was allegedly blinded.

The former employee had made serious charges against his supervisor, alleging that the supervisor had, because of personal religious beliefs, refused to submit a claim to the Workers' Compensation Board, as he was legally required to do. There was no evidence to substantiate this allegation.

The Ombudsman advised the man that he would not support his complaint against the department.

83-4603-28 **Justified - Rectified**

In the early part of 1983, the Ombudsman received a complaint from the then chairman of the Inmate Advisory Committee at the St. Paul Correctional Centre.

In late 1982, there had been a fire at the centre. In an attempt to return the facility to normal as quickly as possible, a number of inmates had been "hired" to work on a clean-up crew. They were told that they would be paid $8 an hour for their work. However, when the work was completed, they were paid only $3.80 an hour — the minimum wage.

The Ombudsman's investigation established that some serious questions surrounded whether those who mentioned the $8 figure to the inmates had been authorized to do so. However, there was no question that the amount was mentioned.

While the Ombudsman agreed that the inmates should not expect to be paid the same as someone hired from outside the centre, he felt that the credibility of those in charge of St. Paul Correctional Centre would be gravely damaged by reneging on a commitment which had been made. Such credibility is vital in a minimum security setting such as that at St. Paul.

The Ombudsman consulted with the Solicitor General, as he is authorized to do by *The Ombudsman Act*, and presented a compromise recommendation that the inmates be paid a middle figure of $5.80 per hour. The Solicitor General readily accepted this formula and arrangements were made for payment to the inmates.

83-4603-19 **Justified - Rectified**

An inmate at the Calgary Correctional Centre contacted the Ombudsman saying that there had been a miscalculation of his sentence. He said that the centre planned to hold him for 30 days longer than his sentence.

Discussions were held with officials of the centre, as well as officials of the Department of the Attorney General. Those discussions proved the inmate correct, and his sentence was recalculated.

MOTOR VEHICLES BRANCH

83-4602-35 **Justified - Rectified**

The complainant in this case wrote to the Ombudsman after being told that her driver's licence had expired five years earlier, and that she would have to apply for a new licence, entailing taking a new road examination. The complainant was particularly concerned since she had been driving during those five years, believing that she was the holder of a valid licence.

The Ombudsman's investigation revealed that the complainant had moved to Alberta from another province in 1978, and had taken the driver's licence from the other province to a Motor Vehicles office to obtain an Alberta licence. A few days later, the complainant, in examining her new licence, noticed that the expiry date was listed as 1978. She returned to the Motor Vehicles office, and was told that this was a typing error and that she did, in fact, have a licence for five full years. A few months later, the complainant received a notice from the Motor Vehicles Branch, saying that she needed to renew her licence. She again went to the Motor Vehicles Branch and was told to ignore the notice.

During 1983, the complainant was asked to produce her driver's licence while at a Motor Vehicles office. The clerk, seeing that the expiry date was 1978, told the complainant that her licence was not valid. The complainant recounted the past events to the clerk, but was told that she had been operating a vehicle without a valid licence for five years, and would now have to take new tests in order to obtain a valid licence.

The Deputy Solicitor General, on being advised of the case, reported that the department accepted the complainant's version of the incidents. It waived all tests and issued a new licence to the complainant.

83-4602-37 **Justified - Rectified**

The complainant alleged that the records of the Motor Vehicles Branch were incorrect, thereby affecting his insurance rates.

The complainant had been convicted of impaired driving, and his driver's licence was automatically suspended. When he filed an appeal from his conviction, his licence was reinstated. The appeal court upheld his conviction and the suspension was reinstated. However in making the records, an error developed in which the date of the appeal court's decision was listed as the date on which the complainant was convicted. This was important to the complainant since he had been told insurance companies levy a surcharge for three years following conviction.

The Motor Vehicles Branch acknowledged the error, corrected it and sent a copy of the revised record to the complainant.

DEPARTMENT OF TRANSPORTATION

83-4800-6 **Justified - Rectified**

An employee of the department resigned before settlement of the last contract between the government and the Alberta Union of Provincial Employees. When that agreement was signed, it provided for a retroactive salary increase, which meant that

the complainant was entitled to receive several hundred dollars. He had written to the department and been unable to obtain this money.

The Ombudsman's investigation revealed that retroactive pay to former employees cannot be issued until after all divisions of government enter into contracts. An additional delay was encountered as a result of a processing problem, but the complainant finally received his cheque.

ALBERTA TREASURY

83-3802-1 **Declined 11(1) - No Assistance Possible**

A 35-year employee of the government complained that he was unable to partake of full pension benefits under *The Public Service Pensions Act* because he was too young.

The complainant had joined the public service at an early age, and would attain the maximum pensionable service of 35 years by the time he had reached the age of 52 years. To take a pension at that age would result in penalty, unless there was some medical disability. The minimum retirement age without penalty is 55 years, and the complainant felt that was an arbitrarily chosen number.

The age requirement is clearly established by legislation and, as a result, there was no administrative action which the Ombudsman could investigate. The complainant was referred to his Member of the Legislative Assembly.

83-3800-1 **Partially Justified - Partially Rectified**

A transfer of pension funds from Ontario to Alberta, and a subsequent transfer to British Columbia, caused this complainant some concern.

On the original transfer from the Ontario public service to a government position in Alberta, the complainant had been hired with the understanding that there would be no deficit to pick up on the transfer of his pension contributions from one plan to the other. It was later determined that there was a deficit of approximately $6,000 as a result of negotiations between the provinces on reciprocal transfer agreements. The deficit was made up by the hiring department and the complainant on an agreed percentage basis.

The complainant later moved to British Columbia and asked to have his pension monies from Ontario and Alberta transferred to the B.C. plan. He then learned that the portion of the money placed in the Alberta plan by his former department had not been transferred. He was unable to determine why this had happened, and contacted the Ombudsman.

The Pensions Branch of Alberta Treasury advised the Ombudsman that the reciprocal agreement had not been signed by Ontario. As a result, the deficit payment of approximately $6,000 should not have been accepted. The Alberta department for which the complainant had worked recovered its payment, and the balance — that which was paid by the complainant — was transferred to the B.C. plan.

When the Ombudsman provided this explanation, the complainant was satisfied.

DEPARTMENT OF UTILITIES AND TELECOMMUNICATIONS

83-4200-2 **Justified - Rectified**

The complainant was entitled to receive payment for crop loss as a result of the construction of a natural gas transmission line across his property. The department's offer of payment of an amount equal to crop loss for one year was rejected by the complainant, who sought payment for a three-year period. The dispute commenced in 1980, but was brought to the Ombudsman's attention only in 1983.

In light of the complex issues involved in the case, one of the Ombudsman's assistants and an Assistant Deputy Minister of the department inspected the complainant's property. The matter was resolved when the complainant accepted the department's offer of $1,800, which covered a two-year crop loss.

ALBERTA GOVERNMENT TELEPHONES

83-4201-110 **Unsupported - No Assistance Possible**

An employee of Alberta Government Telephones complained to the Ombudsman about the demotion of a group of employees which included him.

The Ombudsman's investigation disclosed that the changes in the administrative structure were made as a result of a reclassification study and in accordance with sound business principles.

The complainant and employees in the same position will continue to receive pay on the basis of their former, higher classification until early in 1985. Efforts are being made to relocate the affected employees in other positions that will prevent their suffering a financial loss.

The Ombudsman concluded that there were legitimate reasons for the changes, and that he could not support the complaint.

82-4201-31 **Justified - Rectified**

The complainant, an employee of Alberta Government Telephones, returned to work after having received compensation benefits for a period of time. He complained that the corporation was "holding back" two weeks' pay.

The situation was satisfactorily explained by the corporation, but what came to the Ombudsman's attention was that although the corporation was complying with its agreement with the union with regard to pay periods, it was not strictly complying with provisions of *The Employment Standards Act*. That Act provides that wages earned by an employee must be paid within 10 days of the end of a pay period. The corporation was paying employees within 13 days.

Alberta Government Telephones advised that efforts would be made to revise their payroll system by 1984, permitting the corporation to pay its employees within the stipulated 10-day period.

DEPARTMENT OF WORKERS' HEALTH, SAFETY AND COMPENSATION

83-3500-3 **Partially Justified - No Assistance Possible**

A citizen wrote to the Ombudsman regarding conflicting reports he had received about the death of his son in an industrial accident. The complainant said that he

had received different information from the R.C.M.P. than he had from the department, which had conducted an investigation under *The Occupational Health and Safety Act* and regulations.

The Ombudsman's investigation indicated that the differing information arose from the failure of the department's investigators to obtain full information from the police officer who first dealt with the accident. Department officials assured the Ombudsman that improved liaison would be ensured in future investigations.

Although the details which were in dispute were not relevant to the final conclusion reached by the Occupational Health and Safety inspectors, the Ombudsman was able to provide some reassurance to the complainant.

WORKERS' COMPENSATION BOARD

Over the years, the Ombudsman has often held informal discussions with departments or agencies about mutual concerns. Sometimes, as here, these discussions have resulted in administrative changes which may prevent future complaints.

The Workers' Compensation Board makes available "personal coverage" to the owners or proprietors of businesses covered under *The Workers' Compensation Act*. This personal coverage, which must be applied for each year, gives the business owner or proprietor the same benefits available to employees, if injured or killed on the job.

On several occasions, widows have written to the Ombudsman complaining that the Workers' Compensation Board has refused to provide them with a pension following their husbands' deaths. While they agreed that in the year during which the death occurred, their husbands had not applied for personal coverage, they said that this omission was an error, and pointed to the fact that such coverage had been purchased for many years before. The Ombudsman's investigations have shown the Workers' Compensation Board to be sympathetic to such cases, but unable to provide much assistance if the coverage had not been requested.

As a result of discussions, the Chairman of the Workers' Compensation Board advised the Ombudsman that consideration would be given to providing a computer-generated message to business owners, reminding them that they had not sought personal coverage. This step can probably be taken at minimal expense. Such a reminder will, however, hopefully be enough to jog the memories of those who had intended, but forgotten, to apply for this protection.

83-3501-33 **Unsupported - Assistance Rendered**

A citizen wrote to the Ombudsman with two complaints about the Workers' Compensation Board. The first was a disagreement over the amount of the pension he was receiving. The complainant felt that he had a greater disability than the Board recognized. The Board's decision was based on medical evidence before it. If the complainant was able to provide new or additional medical evidence, the Board would reconsider the amount of the pension. The Ombudsman was, therefore, unable to support the complainant.

The second complaint alleged that the citizen was not being given access to Vocational Rehabilitation programs offered by the Board. The Ombudsman was satisfied that this was not the case, but that the complainant had chosen to seek help from another government department. The Ombudsman put the complainant in touch with the appropriate Board official to discuss rehabilitation programs that may be of assistance to him.

83-3501-126 **Unsupported - No Assistance Possible**

A man's claim to the Workers' Compensation Board was denied. After he went through the appeal procedures available to him, he turned to the Ombudsman for assistance.

The investigation of the case revealed that the man's claim alleged he had been injured at work more than six years earlier. Since the company which employed him said it did not know of any accident, a full investigation was conducted by the Workers' Compensation Board. Two co-workers named as witnesses denied any knowledge of a work-related accident, while a third did say that the complainant had been injured at work. However, the description of the accident provided by this third employee differed substantially from that provided by the complainant. It was also of interest to note that none of the medical reports available showed that the worker had made any reference to being injured at work.

The Board had concluded that there was no evidence to demonstrate that the complainant's injury was work-related. The Ombudsman found no reason to challenge the Board's decision.

83-3501-60 **Unsupported - Assistance Rendered**

The Ombudsman Act provides that the Ombudsman may not investigate a complaint until after a person has exercised all appeals that are available to him. In the case of Workers' Compensation claims, this usually means that the Ombudsman does not become involved until after the Commissioners of the Board have considered a case.

Here, however, the complaint was that the Board was delaying its decision on the complainant's claim, and an investigation was undertaken by the Ombudsman. That investigation indicated that there were legitimate reasons for the delay. The complainant's claim came two years after the initial injury, and there was some doubt as to whether his current difficulties could be related to the original accident. In addition, the man's employer objected to acceptance of the claim, saying that it was related to other activities, and not work.

Following the Ombudsman's involvement, new medical evidence was obtained and reviewed, and the complainant was given the benefit of the doubt. His claim was accepted and he began receiving compensation payments.

83-3501-180 **Partially Justified - Partially Rectified**

A man wrote to the Ombudsman with a number of complaints against the Alberta Workers' Compensation Board. He said that he did not agree with the amount of pension he was receiving or the refusal of Board officials to retrain him. He also indicated that he had appealed some of the decisions involved in the case, and that the appeal had not been dealt with in seven months.

During his investigation, the Ombudsman found that the initial submission of the appeal was couched in terms that indicated the appeal should proceed only if certain other things did not happen. But the Ombudsman felt there were reasons to believe that the appeal should have been processed earlier. The investigation also confirmed that there had been delays, once the appeal was activated, but that there were legitimate reasons for the delay.

Within 15 days of the Ombudsman's involvement, the complainant was advised of the appeal body's decision.

APPENDIX

"THE OMBUDSMAN AND THE ELECTED MEMBER"

by

RANDALL E. IVANY
Ombudsman for Alberta

as published in

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INTRODUCTION

In 1967, the Province of Alberta, Canada was the first jurisdiction in the Western Hemisphere to establish the office of Ombudsman. Taking the New Zealand experience as a model, the Legislative Assembly of Alberta conferred upon the Ombudsman the authority to investigate any complaint relating to a matter of administration involving any department or agency of the province's government. Over the years, the definition of agency has been changed so that the Ombudsman is now empowered to investigate any administrative action of any body, all or a majority of whose members are appointed by legislation, or by order of the Lieutenant-Governor-in-Council (the Cabinet), a Minister of the Crown, or by any combination of these. In addition, the Ombudsman has the authority to investigate the administration of any corporation which is wholly owned by the Government of Alberta.

While the primary focus of the Ombudsman's caseload comes as a result of complaints sent to him by citizens of the province, he has also been given the authority to initiate an investigation on his own motion, without need of a complaint. This power, although used sparingly, has been exercised in cases where, in the opinion of the Ombudsman, an investigation into a specific complaint would not provide the necessary mechanism for a review of an entire operational system, or where, because of the nature of a particular situation, the Ombudsman is unlikely to receive a letter of complaint. The most notable case of this power being used by the Ombudsman occured in 1981, when he began an investigation into the foster care program operated by the government to deal with children who had been apprehended by the government and classified as in need of protection. That investigation led to a report containing 40 recommendations for improvements in the system. The vast majority of these recommendations were accepted and implemented by the government.

Investigations may also be conducted by the Ombudsman upon the referral of a committee of the Legislative Assembly, or of a Minister of the Crown. In these cases, the Ombudsman may investigate the matter referred to him insofar as that matter is within the Ombudsman's jurisdiction. Although no experience has been had with a referral from a committee of the Assembly, the Ombudsman has, on several occasions, accepted a referral from a Minister who felt that the Ombudsman was in the best position to conduct an independent investigation of a particular matter.

In the most recent case in which this happened, a department of government had conducted an investigation after receiving reports alleging that the patients in a mental health hospital had been abused. The department's investigation led to the dismissal of a number of the hospital's employees and lesser forms of discipline being imposed on others. Concern over the conduct of the investigation was expressed by the employees, their union and by others interested in the mental health care field. As a result, the department's Minister referred the matter to the Ombudsman, whose conclusions differed, in a number of areas, from that of the department's investigators. Indeed, the Ombudsman went on in his report to address the whole question of how such investigations should be carried out by the department in future, and made a number of recommendations for administrative changes at the hospital to better prevent and detect possible case of abuse.

Throughout the 17 years the Office of the Ombudsman for Alberta has been in existence, it has attempted to maintain a close relationship with the elected members of the Legislative Assembly. This is as it should be. The Ombudsman, as an Officer of the Legislature, is accountable to the elected members of the Assembly and it is to these members the Ombudsman must turn if his recommendations do not find acceptance with the Minister involved or the Lieutenant-Governor-in-Council.

Yet, there is another important reason why there must be a close working relationship between the Ombudsman and the elected member. The citizens in each constituency, at every election, choose the person they feel is best able to represent their interests in and with the provincial government. A member, once elected, may have a number of resources available to him, depending on whether he sits on the government or opposition side of the Assembly and, further, whether, if a government member, he is a Minister or a backbencher. These resources may allow the elected member to resolve problems of a constituent directly, and to bring to the attention of the responsible Minister problems which have a wider effect than a specific complaint. The Ombudsman is, in this respect, one of the resources to which an elected member may turn in dealing with a specific problem.

ALLY OR COMPETITOR?

Among Commonwealth countries, states and provinces which have appointed legislative Ombudsmen, most have provided that a citizen has direct access to the Ombudsman and may address a complaint to him directly. The most notable exception in this regard is Great Britain.

The United Kingdom Parliament, in establishing both the Parliamentary Commisssioner for Administration, and the Commission for Local Administration, has directed that complaints must be referred to the Commissioners by an elected representative. The Commisssion for Local Administration may accept a direct complaint only where there is evidence that the citizen has forwarded the complaint to a member of the local authority and that member has not sent the letter to the Commissioner. No similar authority has been given to the Parliamentary Commissioner.

While this referral requirement may do much to ensure that elected representatives are aware of the types of problems being faced by their citizens, the United Kingdom experience has not found much favour with the drafters of most Ombudsman legislation in the world. As is the case in Alberta, most Ombudsman may, and do, receive most of their complaints directly from the citizen who feels adversely affected by an administrative decision of government.

The risk of such direct referrals is, of course, the fear that an elected member may consider the Ombudsman a competitor for the respect of his constituents. Clearly, a citizen whose problem is resolved by his elected member has a greater respect for that member. Conversely, if the problem is solved by the Ombudsman, does the citizen consider the Ombudsman to be an improvement on, or better than, the elected member?

Happily, this fear does not seem to have materialized, to any great extent, in Alberta. Indeed, the opposite is the case. Elected members and, sometimes, Ministers, refer citizens to this office, assuring them that their concerns will be independently investigated and, if justified, recommendations for correction will be made. In turn,

the Ombudsman refers to the elected members complaints which are outside of his jurisdiction and which involve the law and policy-making functions of the Legislature. In short, the co-operation exists primarily because the Ombudsman and the elected members have a respect for the role of each in ensuring the protection of the citizen.

Indeed, the Ombudsman for Alberta has often publicly stated that the elected member is, in many respects, an Ombudsman in his or her own right.

CONTACT BETWEEN THE OMBUDSMAN AND THE ELECTED MEMBER

Any relationship, to be maintained, requires contact and there is constant contact between the Ombudsman and the elected member of the Legislative Assembly. Such contact can usually be considered as either administrative or investigative in nature.

The most public contact between the Ombudsman and the Assembly is through the annual report which the Ombudsman is required to file. The report, distributed to all members and tabled in the Assembly, goes beyond a statistical report of the number of cases undertaken by the Ombudsman during the year.

Firstly, the report contains comments by the Ombudsman, discussing trends he sees emerging. The comments may also indicate specific areas in which the Ombudsman feels improvement in government-citizen relationships is required. This narrative has also, on some occasions, expressed feelings that there are citizens who feel it is the government's responsibility to protect them from all exigencies — a feeling not shared by the Ombudsman.

In the statistical section of his report, the Ombudsman sets out the number of complaints he receives from each of the electoral districts in the province. Thus, the elected member can, by comparing the statistics with those contained in earlier reports, determine if there appears to be an upsurge in dissatisfaction. Although not often requested, the Ombudsman can provide an elected member with a summary of the nature of complaints received from his or her constituency although he cannot, without the permission of the complainant, reveal to the elected member the source of the complaint.

As with the reports of most Commonwealth Ombudsmen, the Ombudsman for Alberta includes in his report summaries of some of the cases investigated during the reporting year. These summaries are carefully chosen to represent a cross-section of complaints received, whether supported by the Ombudsman or not.

The Ombudsman for Alberta feels that elected members, and the public, need to know that he does not always find fault with the government handling of a particular matter. Indeed, during the 17 years the office has existed, only slightly more than one-quarter of the complaints investigated has resulted in a finding that the complaint was justified.

The individual statistics for each department are also set out, so that a Minister, or an elected member particularly concerned about one area of government activity, can see whether there has been a disproportionate share of complaints in which a finding, adverse to the government, has been made by the Ombudsman.

In other administrative matters, including consideration of his budget and amendments to his enabling legislation, the Ombudsman deals with the Assembly's Select Standing Committee on Legislative Offices. This committee, which also has responsibility for reviewing the operation of the Office of the Auditor General and the Chief Electoral Officer, was established in 1978, after a review of the Ombudsman experience by the Legislature. The committee which conducted that review sought the opinions of the Ombudsman, who reported that he felt somewhat isolated in the sense that there was no forum for regular discussions between the Ombudsman and the Legislative Assembly.

The Ombudsman pointed out that the legislation then in force provided for him to submit his annual budgetary estimates to the Speaker, who was obviously not in a position to speak on behalf of the office should questions about the budget arise in the Assembly. He also noted that the same situation would exist should he ever find it necessary to table a special report in the Assembly. Even the annual report could raise questions about the Ombudsman's operations, and there was no formal way in which elected members could seek answers to those questions. Nor did the Ombudsman have any avenue by which he could formally recommend to the Assembly changes in the legislation governing his work.

As a result, the Select Standing Committee was established with members appointed from all political parties represented in the Assembly. The Committee annually reviews the budgetary estimates, reports issued by the Ombudsman, and the salary paid to the Ombudsman. Should questions later be raised in the Assembly about any of these matters, the Chairman of the Select Standing Committee is, therefore, in a position to advise the elected members.

In the investigative area, the Ombudsman deals with elected members individually. As noted earlier, it is not uncommon for the Ombudsman to receive complaints from citizens who have been referred to him by an elected member. Indeed, sometimes, the elected member is the one who actually files the constituent's complaint.

Recognizing the realities of political life, it is not surprising that most of the complaints brought to the Ombudsman's attention by elected members originate from those members who sit on the opposition side of the Assembly. Naturally, their access to government documents is considerably less that that of a member who forms part of the governing party. Likewise, their ability to deal directly with senior civil servants might be considered as more restricted.

Yet, the Ombudsman also receives a number of letters each year from members of the governing party who, for one reason or another, have not been able to resolve a complaint sent to them by a constituent. In some cases, admittedly, the constituent is being totally unreasonable, and the elected member has gone as far as he or she can in trying to explain the situation to the citizen. In these cases, the elected member can, by referring the complaint to the Ombudsman, assure the citizen that a totally independent review will be carried out. The Ombudsman's experience has shown that some citizens are more reassured after such an investigation, despite the fact that the Ombudsman's final report may say exactly the same thing as did the elected member. In other cases, elected members have suggested that a specific matter may raise wider-ranging concerns which, because of time and resource availability, the elected member may not be able to fully review.

In cases where an elected member has referred a complaint to the Ombudsman, it is the practice of the Ombudsman to keep the member involved. The elected member may be invited to attend an interview between the Ombudsman and the citizen. At the very least, he or she will be advised whether an investigation is to be conducted and, if so, the results of that investigation.

The Ombudsman also regularly receives letters from citizens whose complaint is not with a matter of administration *per se*, but rather with a matter of policy or legislation. Although *The Ombudsman Act* does provide the Ombudsman with authority to make recommendations in cases where he finds that an administrative action is in accordance with a practice or law which is unreasonable, unjust, oppressive or improperly discriminatory, the majority of these letters express a feeling that a given policy or law was ill-considered. This, clearly, is a matter for the Legislature to deal with, and the citizen is referred to his elected member.

THE OMBUDSMAN AND MINISTERS

Different considerations — legislative and practical — govern dealings between the Ombudsman and members of the Cabinet, primarily because Ministers are the heads of departments which are being investigated by the Ombudsman.

That is not to say that referrals to the Ombudsman are not also made by members of Cabinet. Ministers also represent constituencies and, to that extent, sometimes find themselves in the same position as any other elected member. Their other responsibility is to deal with the affairs of the department they head, and Ministers who feel their department is being improperly accused by a citizen may sometimes suggest the citizen utilize his right to seek the independent investigation offered by the Ombudsman. (These referrals differ from the formal power of Ministers to request personally an investigation by the Ombudsman into a particular matter.)

More contact with Ministers is had, however, when the Ombudsman has received a complaint involving the Minister's department. One question which may arise in the initial stages may involve the jurisdiction of the Ombudsman to investigate the particular complaint. Although the Ombudsman has the right, under his legislation, to seek a declaratory judgement from the Courts as to his jurisdiction, such a course of action is both time-consuming and costly. Instead, the practice of this office has been to consult the Minister involved and the Attorney General, who would represent the government in any such court proceedings. As a result of these consultations, it has been necessary for the Ombudsman to go to court only once, and then, in the early days of the office's existence.

Most of the contact between a Minister and the Ombudsman now comes following an investigation in which the Ombudsman has concluded that a citizen's complaint is well-founded. In these cases, the Ombudsman may meet with the responsible Minister either before or after formulating a recommendation which will, in the opinion of the Ombudsman, rectify the problem which was discovered. Such meetings have always been characterized by frankness and a willingness to respect the other's point of view — essential elements in any relationship between the Ombudsman and those who administer the departments which the Ombudsman investigates. This spirit of co-operation has led to equitable resolutions of many complicated problems over the years.

Like other legislative Ombudsmen in the Commonwealth, the Alberta Ombudsman has recourses available to him should a particular Minister not agree with a recommendation proposed by the Ombudsman. In such cases, the Ombudsman may first make a special report to the Cabinet, sitting as a whole. If he is not satisfied with the results of the Cabinet's deliberations, he may make a special report to the full Assembly on a particular case. The relationship between the Ombudsman and the Alberta government has been such that only one case has ever had to be submitted to the full Assembly for consideration.

Indeed, all members of Cabinet have displayed an open willingness to meet with, or to accept telephone calls from, the Ombudsman whenever necessary. The Premier, who heads the government, has also expressed to the Ombudsman that his door is always open should the Ombudsman experience any difficulties.

Contact between the Ombudsman and a Minister may also come while an investigation is underway. In common with other legislative Ombudsmen around the world, the Ombudsman for Alberta has been given broad investigative powers. With few exceptions, he has access to all government documents. He has the authority to require persons to appear before him to give evidence, whether those persons are employees of the govenment or not. He can require the production of documents from any source within the province. In the vast majority of cases, no problem is ever encountered during an investigation. But these formal powers remain in reserve, should they be required. In a few exceptional cases, government employees have declined to be interviewed, or attempted to withhold documents which the Ombudsman requires to complete his investigation. Rather than revert to his formal powers, the Ombudsman has, on these occasions, reported the situation to the Minister. In all cases, the government employee has been told to co-operate with the Ombudsman, reducing considerably the time and effort required to conclude the investigation.

PARTICULAR CASES INVOLVING ELECTED MEMBERS

As can be seen from the foregoing, the Ombudsman for Alberta has adopted the attitude that he can best serve the citizens of the province by maintaining a good relationship with elected members of the Assembly.

While the Ombudsman has no authority to investigate actions of an elected member while serving as such, there are occasions on which the Ombudsman does find himself sitting across the investigative table from an elected member.

In two recent cases, the Ombudsman has had to deal with complaints against committees which are chaired by members of the Assembly. These committees, which are distinct from committees of the Assembly, themselves conduct investigations into the operation of health care facilities and social care facilities. These committees have a wider jurisdiction than does the Ombudsman, in that they may deal with any complaint against a facility which is funded by government, even though it is not operated by government. Yet these committees themselves are subject to the Ombudsman's jurisdiction.

In the first case, the committee had been requested to review media reports alleging that mentally retarded persons in a certain facility had been abused.

After the committee reported that it could find no evidence of such abuse, two persons wrote to the Ombudsman complaining of the manner in which the investigation had been carried out. Since the matter was clearly within the Ombudsman's jurisdiction, he agreed to conduct his own investigation. He eventually reported that while he agreed with the committee that there was a lack of evidence to substantiate the allegations, he had concerns about the way in which the investigation had been conducted and made suggestions for procedural changes.

In the other case, a citizen complained that a recommendation formulated by one of these committees had undermined his authority as guardian of his elderly father's affairs. In his report, the Ombudsman concluded that the committee had, in fact, failed to take fully into account the guardian's authority and responsibilities.

Both of these cases caused the Ombudsman some difficulty in that he was, in essence, investigating an investigation. In both cases, the institutions involved were beyond the Ombudsman's jurisdiction, but the fact that the committees were subject to his jurisdiction meant that he was required to virtually re-investigate the substantive complaints. These cases have resulted in a recommendation to the Select Standing Committee for changes in the Ombudsman's legislation to govern any further such cases.

CONCLUSION

For most, if not all, of the 17 years in which Alberta has had an Ombudsman, there has been a close and important working relationship between the Ombudsman and the elected members of the Legislative Assembly. This does not mean, of course, that there will always be agreement on any given case or principle.

By way of illustration, the Ombudsman has recommended over the course of several years, that the Assembly provide him with the authority to investigate complaints against municipal governments. His proposal, prepared after the idea received endorsement from the two largest municipalities and an association of rural municipalities, would allow a municipal government to choose to be subject to the Ombudsman's jurisdiction. After such a choice had been made, the Ombudsman could accept complaints involving that municipality. He has argued that this course of action, which has been accepted in two other Canadian provinces, is preferable to having municipalities establish their own Ombudsmen and thereby create confusion in the minds of citizens. He has also argued that because of the many areas in which there is an overlap of responsibility between provincial and municipal governments, providing one office with the authority to investigate both levels of administration would result in greater service to the public. Thus far, the members of the Assembly have not chosen to make the necessary amendments to legislation to give effect to this proposal.

Nonetheless, the relationship which has existed between the elected members and the Ombudsman has, in the final analysis, resulted in the Office of the Ombudsman for Alberta being able to provide much more redress to citizens than would be the case if there were an adversarial relationship.

GOVERNMENT OF THE PROVINCE OF ALBERTA

OMBUDSMAN ACT

CHAPTER 0-7
REVISED STATUTES
OF ALBERTA
1983

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THE OMBUDSMAN ACT

CHAPTER O-7

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "agency" means a Provincial agency as defined in section 1 of the *Financial Administration Act* but does not include

(i) the board of a university under the *Universities Act*,

(ii) the board of a public college under the *Colleges Act*,

(iii) the Governors of the Banff Centre for Continuing Education,

(iv) the board of management of a Provincial General Hospital under the *Provincial General Hospitals Act*,

(v) the Alberta Cancer Board,

(vi) the University Hospitals Board under the *University of Alberta Hospitals Act*,

(vii) the Hospital Privileges Appeal Board, and

(viii) the board of a technical institute under the *Technical Institutes Act*;

(b) "department" means a department as defined in section 1 of the *Financial Administration Act*;

(c) "Minister" means a member of the Executive Council;

(d) "Select Standing Committee" means the Select Standing Committee on Legislative Offices.

RSA 1980 cO-7 s1;1981 cT-3.1 s44;1982 c10 s8; 1983 cL-10.1 s57

Appointment

2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Ombudsman.

(2) Subject to section 7, the Lieutenant Governor in Council shall

appoint the Ombudsman on the recommendation of the Legislative Assembly.

RSA 1980 cO-7 s2

Restriction as to holding other offices

3(1) The Ombudsman may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.

(2) The Ombudsman must be a Canadian citizen.

RSA 1980 cO-7 s3

Term of office

4 Unless his office sooner becomes vacant, a person appointed as Ombudsman holds office for 5 years

(a) from the date of his appointment under section 2, or

(b) from the date his appointment under section 7 is confirmed under that section,

and continues to hold office after the expiry of his term of office until he is reappointed, his successor is appointed or a period of 6 months has expired, whichever occurs first.

RSA 1980 cO-7 s4

Resignation

5 The Ombudsman may at any time resign his office by writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Legislative Assembly.

RSA 1980 cO-7 s5

Suspension or removal from office

6(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Ombudsman from his office for disability, neglect of duty, misconduct or bankruptcy.

(2) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may suspend the Ombudsman from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

RSA 1980 cO-7 s6

Vacancy in office

7(1) If the Ombudsman dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(2) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (3) applies as if the vacancy had occurred while the Legislature was not in session.

(3) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may appoint an Ombudsman to fill the vacancy

and unless his office sooner becomes vacant, the person so appointed holds office until his appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next ensuing regular session, the appointment lapses and there shall be deemed to be another vacancy in the office of Ombudsman.

RSA 1980 cO-7 s7

Salary

8(1) The Ombudsman shall be paid a salary at a rate set by the Select Standing Committee and the Select Standing Committee shall review that salary rate at least once a year.

(2) The Ombudsman shall receive similar benefits to those provided to Deputy Ministers.

RSA 1980 cO-7 s8

Oath of office

9(1) Before entering on his duties, the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except in accordance with section 19(2) or section 22(3) and (4), divulge any information received by him under this Act.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or by the Clerk of the Legislative Assembly.

RSA 1980 cO-7 s9

Office of the Ombudsman

10(1) There shall be a department of the public service of Alberta called the Office of the Ombudsman consisting of the Ombudsman and the employees appointed pursuant to the *Public Service Act* to assist the Ombudsman in the efficient carrying out of his functions under this Act.

(2) On the recommendation of the Ombudsman, the Select Standing Committee may order that

(a) any regulation, order or directive made under the *Financial Administration Act*, or

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

be inapplicable to, or be varied in respect of, the Office of the Ombudsman or any particular employee or class of employees in the Office of the Ombudsman.

(3) An order made under subsection (2)(a) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

(4) The *Regulations Act* does not apply to orders made under subsection (2).

(5) The chairman of the Select Standing Committee shall lay a copy

of each order made under subsection (2) before the Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(4) Every person holding an office or appointment under the Ombudsman shall, before he begins to perform his duties under this Act, take an oath, to be administered by the Ombudsman, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

RSA 1980 cO-7 s10;1983 cL-10.1 s57

Financing of operations

10.1(1) The Ombudsman shall submit annually to the Select Standing Committee in respect of each fiscal year an estimate of the sum that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Ombudsman in that fiscal year.

(2) The Select Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on completion of the review, the chairman of the Committee shall transmit the estimate to the Provincial Treasurer for presentation to the Assembly.

(3) If at any time the Legislative Assembly is not in session the Select Standing Committee on Legislative Offices, or if there is no Select Standing Committee, the Provincial Treasurer,

(a) reports that the Ombudsman has certified that in the public interest an expenditure of public money is urgently required in respect of any matter pertaining to his office, and

(b) reports that either

(i) there is no supply vote under which an expenditure with respect to that matter may be made, or

(ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by himself authorizing the expenditure of the amount estimated to be required.

(4) When the Legislative Assembly is adjourned for a period of more than 14 days, then, for the purposes of subsection (3), the Assembly shall be deemed not to be in session during the period of the adjournment.

(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

(6) When a special warrant is prepared and signed under subsection

(3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(7) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

1982 c25 s2;1983 cL-10.1 s57

Functions and duties

11(1) It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency,

or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment

(2) The Ombudsman may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

(3) The powers and duties conferred on the Ombudsman by this Act may be exercised and performed notwithstanding any provision in any Act to the effect

(a) that any decision, recommendation, act or omission mentioned in subsection (1) is final,

(b) that no appeal lies in respect thereof, or

(c) that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

(4) Without limiting subsection (1), any committee of the Legislative Assembly may at any time refer to the Ombudsman, for investigation and report by him, any petition that is before that committee for consideration or any matter to which the petition relates and, in that case, the Ombudsman shall,

(a) subject to any special directions of the committee, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the committee that he thinks fit.

but nothing in section 14, 20 or 21 applies in respect of any investigation or report made under this subsection.

(5) Without limiting subsection (1), a Minister may at any time by order refer any matter to the Ombudsman for investigation and report by him and, in that case, the Ombudsman may

(a) subject to any special directions of the Minister, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the Minister that he thinks fit,

but nothing in section 14, 20 or 21 applies in respect of any investigation or report made under this subsection.

(6) An order made by a Minister under subsection (5) shall be published forthwith in The Alberta Gazette.

RSA 1970 c268 s11;1978 c29 s7

Jurisdiction restricted

12(1) Nothing in this Act authorizes the Ombudsman to investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or

(b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings.

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Court of Queen's Bench for a declaratory order determining the question.

RSA 1970 c268 s12;1978 c51 s29

Complaint to Ombudsman

13(1) Every complaint to the Ombudsman shall be made in writing.

(2) Notwithstanding any Act, when a letter written by

(a) any person in custody on a charge or after conviction of any offence, or

(b) a patient of

(i) a facility within the meaning of the *Mental Health Act*, or

(ii) a place established under section 3(1) of that Act,

is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.

RSA 1970 c268 s13;1972 c118 s70;1978 c29 s8

Refusal to investigate

14(1) If in the course of the investigation of any complaint it appears to the Ombudsman

(a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it, or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate any complaint

(a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or

(b) if in his opinion,

(i) the subject matter of the complaint is trivial,

(ii) the complaint is frivolous or vexatious or is not made in good faith, or

(iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

(3) When the Ombudsman decides not to investigate or to cease to investigate a complaint, he shall inform the complainant of his decision and he may, if he thinks fit, state his reasons for his decision.

RSA 1970 c268 s14

Notice of investigation

15(1) Before investigating any matter under this Act, the Ombudsman shall inform the deputy minister of the department or the administrative head of the agency affected, as the case may be, of his intention to make the investigation.

(2) The Ombudsman may, in his discretion, at any time during or after an investigation consult any Minister who is concerned in the matter of the investigation.

(3) On the request of any Minister in relation to an investigation or in any case where an investigation relates to a recommendation made to a Minister, the Ombudsman shall consult that Minister after making the investigation and before forming a final opinion on any of the matters referred to in section 20(1) or (2).

(4) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department or agency, he shall refer the matter to the deputy minister of the department or the administrative head of the agency, as the case may be.

RSA 1970 c268 s15

Conduct of investigation

16(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hear or obtain information from any persons he thinks fit and he may make inquiries he thinks fit.

(3) Subject to section 27(3), it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman.

(4) Subject to this Act and any rules made under section 28, the Ombudsman may regulate his procedure in any manner he thinks fit.

RSA 1970 c268 s16;1972 c75 s4

Evidence at investigation

17(1) Subject to this section and section 18, the Ombudsman may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him, and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of a department or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

(2) When the Ombudsman requires the production of a document, paper or thing under subsection (1), he may require it to be produced at a place designated by him and may require that it be left in his possession for the purposes of his investigation but, on the request of the deputy minister of the department or the administrative head of the agency, the Ombudsman shall return the document, paper or thing to the department or agency as quickly as possible, but not later than 48 hours after the receipt of the request, subject to his right to again require its production in accordance with this section.

(3) The Ombudsman may summon before him and examine on oath

(a) any person who is an officer or employee or member of any department or agency and who in the Ombudsman's opinion is able to give any information mentioned in subsection (1),

(b) any complainant, and

(c) any other person who in the Ombudsman's opinion is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath.

(4) Subject to subsection (5), a person who is bound by an Act to maintain secrecy in relation to, or not to disclose, any matter is not required to

(a) supply any information to or answer any question put by the Ombudsman in relation to that matter, or

(b) produce to the Ombudsman any document, paper or thing relating to it,

if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(5) With the prior consent in writing of a complainant, any person to whom subsection (4) applies may be required by the Ombudsman to supply information or answer any question or produce any document, paper or thing relating only to the complainant, and it is the duty of the person to comply with the requirement.

(6) Every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents, papers and things under this Act as witnesses have in any court.

(7) Except on the trial of a person for perjury, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(8) No person is liable to prosecution for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this section.

RSA 1970 c268 s17;1972 c75 s5

Disclosures restricted

18(1) When the Attorney General certifies that the giving of any information or the answering of any question or the production for any document, paper or thing might involve the disclosure of

(a) the deliberations of the Executive Council, or

(b) proceedings of the Executive Council or a committee of it relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced, but shall report the giving of the certificate to the Legislature.

(2) Subject to subsection (1), the rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman.

(3) Nothing in this Act authorizes the Ombudsman to require any person to produce a pre-sentence report or to furnish any information contained in or relating to a pre-sentence report.

RSA 1970 c268 s18; 1978 c29 s9

Maintenance of secrecy

19(1) The Ombudsman and every person holding an office or appointment under him shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(2) Notwithstanding subsection (1), the Ombudsman may disclose in any report made by him under this Act any matters that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

RSA 1970 c268 s19

Procedure after investigation

20(1) This section applies when, after making an investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

(a) appears to have been contrary to law,

(b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,

(c) was based wholly or partly on a mistake of law or fact, or

(d) was wrong.

(2) This section also applies when the Ombudsman is of the opinion

(a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised

(i) for an improper purpose,

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations,

or

(b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Ombudsman is of the opinion

(a) that the matter should be referred to the appropriate authority for further consideration,

(b) that the omission should be rectified,

(c) that the decision should be cancelled or varied,

(d) that any practice on which the decision, recommendation, act or omission was based should be altered,

(e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,

(f) that reasons should have been given for the decision, or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion and his reasons for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make any report to the Legislature on the matter that he thinks fit.

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.

RSA 1970 c268 s20;1972 s75 s6

Results of investigation to complainant

21(1) If the Ombudsman makes a recommendation under section 20(3) and no action that seems to the Ombudsman to be adequate and appropriate is taken on the recommendation within a reasonable time, the Ombudsman shall inform the complainant of his recommendation and make whatever comments on the matter he thinks fit.

(2) The Ombudsman shall in any case inform the complainant, in the manner and at the time he thinks proper, of the result of the investigation.

RSA 1970 c268 s21

Other inquiries

22(1) No report or recommendation of the Ombudsman and no investigation or other proceeding under this Act leading to a report or recommendation of the Ombudsman shall be made the subject of

(a) an inquiry under the *Public Inquiries Act*, or

(b) an inquiry, investigation, review or hearing by any person or body pursuant to any other Act.

(2) Subsection (1) does not apply to an inquiry, investigation, review or hearing conducted by

(a) the Legislative Assembly,

(b) a committee of members of the Legislative Assembly appointed by a resolution of the Legislative Assembly,

(c) a commissioner under the *Public Inquiries Act*, if a resolution

of the Legislative Assembly authorized the Lieutenant Governor in Council to make an order for the inquiry under that Act, or

(d) any other person or body appointed by a resolution of the Legislative Assembly,

and any resolution made under clause (b), (c) or (d) shall prescribe the terms of reference of the inquiry, investigation, review or hearing.

(3) Notwithstanding section 19 or any oath taken under section 9 or 10 but subject to subsection (4),

(a) the Ombudsman or a former Ombudsman, or

(b) any person who holds or formerly held an office or appointment under the Ombudsman or a former Ombudsman,

is a compellable witness in any inquiry, investigation, review or hearing mentioned in subsection (2) in respect of matters that came to his knowledge in the course of the administration of this Act.

(4) The Ombudsman or any other person mentioned in subsection (3) who is a witness in any inquiry, investigation, review or hearing mentioned in subsection (2)

(a) shall not answer any question or be compelled to answer any question, and

(b) shall not produce or be compelled to produce any document, paper or thing,

when the Ombudsman or counsel on his behalf objects on the ground that the answer, document, paper or thing relates to matters of a secret and confidential nature.

(5) When a former Ombudsman or any person who holds or formerly held an office or appointment under the Ombudsman or a former Ombudsman is summoned as a witness in an inquiry, investigation, review or hearing mentioned in subsection (2), the person who summoned that witness shall forthwith give notice of that fact to the Ombudsman that is sufficient in the circumstances to enable him to appear and to make objections in respect of the witness's testimony pursuant to subsection (4).

1972 c75 s7

Proceedings not subject to review

23 No proceedings of the Ombudsman shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceedings or decision of the Ombudsman shall be challenged, reviewed, quashed or called in question in any court.

RSA 1970 c268 s22

Proceedings privileged

24(1) No proceedings lie against the Ombudsman or against any person holding an office or appointment under the Ombudsman for any thing he may do or report or say in the course of the exercise

or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith.

(2) Neither the Ombudsman nor any person holding an office or appointment under the Omdudsman shall be called on to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act.

(3) Any thing said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

(4) For the purposes of the *Defamation Act* any report made by the Ombudsman under this Act shall be deemed to be privileged and a fair and accurate report on it in a newspaper or a broadcast shall be deemed to be privileged.

RSA 1970 c268 s23

Entry of premises

25(1) For the purposes of this Act, the Ombudsman may at any time enter on any premises occupied by any department or agency and inspect the premises and, subject to sections 17 and 18, carry out in those premises any investigation that is within his jurisdiction.

(2) Before entering on any premises pursuant to subsection (1), the Ombudsman shall notify the deputy minister of the department or, as the case may require, the administrative head of the agency that occupies the premises of his intention to do so.

RSA 1970 c268 s24

Delegation of powers

26(1) With the prior approval of the Select Standing Committee, the Ombudsman may, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) A delegation may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Ombudsman.

(4) A delegation may be made subject to any restrictions and conditions the Ombudsman thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and, in the event of the Ombudsman by whom it was made ceasing to hold office, continues to have effect as if made by his successor.

(6) Any person purporting to exercise any power of the Ombudsman by virtue of such a delegation shall, when required to do so, produce evidence of his authority to exercise the power.

RSA 1980 cO-7 s26

Annual report

27(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of his functions under this Act.

(2) The Ombudsman may, from time to time, in the public interest or in the interests of any person or department or agency publish reports relating

(a) generally to the exercise of his functions under this Act, or

(b) to any particular case investigated by him,

whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

(3) The Ombudsman shall not, in a report made under this section, express any opinion or make any comment that is adverse to

(a) any department or any officer or employee of a department,

(b) any agency or any member or employee of an agency, or

(c) any other person or group of persons,

unless prior to making the report to the Legislature or publishing the report pursuant to subsection (2), as the case may be, the Ombudsman has given that department, agency, officer, member, employee, person or group of persons an opportunity to know the nature of the opinion or comment and to make representations to him in respect of it either personally or by counsel.

RSA 1980 cO-7 s27

Rules for guidance

28 The Legislative Assembly may,

(a) of its own volition, or

(b) on the recommendation of the Select Standing Committee,

make rules for the guidance of the Ombudsman in the exercise of his functions and duties.

RSA 1980 cO-7 s28

Storage of and access to files

29(1) The Ombudsman may place any file relating to a complaint made to or an investigation made by the Ombudsman in the Provincial Archives of Alberta at any time after 2 years have elapsed from the date on which the file was closed, if access to the public records in the area in which the files are placed is prohibited or restricted by regulations under section 21 of the *Department of Public Works, Supply and Services Act*.

(2) After 6 years have elapsed from the date on which it is closed

(a) a file relating to a complaint for which the Ombudsman declined to accept jurisdiction may be destroyed, and

(b) any other file made by the Ombudsman relating to a complaint or investigation under this Act may, after it is microfilmed, be destroyed and the microfilm stored in the Provincial Archives.

(3) No person, other than the Ombudsman and the staff of the Office of the Ombudsman, shall have access to the information contained in a file or a microfilm of a file stored in the Provincial Archives under this section.

RSA 1980 cO-7 s29;1983 cD-25.5 s23

Offences and penalties

30 Any person who,

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act,

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act, or

(c) wilfully makes a false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act,

is guilty of an offence and is liable to a fine of not more than $1000 and in default of payment to imprisonment for a term not exceeding 3 months.

RSA 1980 cO-7 s30

Other laws

31 The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which

(a) any remedy or right of appeal or objection is provided for any person, or

(b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

RSA 1980 cO-7 s31

EXCERPT FROM
THE FINANCIAL ADMINISTRATION ACT

1. (c) "department" means

(i) a department of the Government or of the public service of Alberta established by an Act of the Legislature,
(ii) a part of the public service of Alberta that is not part of a department referred to in subclause (i) and that is designated as a department by the Lieutenant Governor in Council for the purposes of this Act, or
(iii) any other part of the public service of Alberta,

but does not include

(iv) the Legislative Assembly Office,
(v) the Office of the Auditor General,
(vi) the Office of the Ombudsman, and
(viii) the Office of the Chief Electoral Officer.

(l) "Provincial agency" means a Provincial corporation or a Provincial committee;

(m) "Provincial committee" means an unincorporated board, commission, council, or other body that is not a department or part of a department, all or a majority of whose members are appointed or designated, either by their personal names or by their names of office, by an Act of the Legislature or regulations under an Act of the Legislature, by an order of the Lieutenant Governor in Council or of a Minister of the Crown or by any combination thereof;

(n) "Provincial corporation" means

(i) a corporation that is incorporated by or under an Act of the Legislature, other than a local or private Act, all or a majority of whose members or directors are appointed or designated, either by their personal names or by their names of office, by an Act of the Legislature or regulations under an Act of the Legislature, by an order of the Lieutenant Governor in Council or of a Minister of the Crown or by any combination thereof, or
(ii) a corporation all of whose issued voting shares of every class are owned by the Crown or held in trust for the Crown or are partly owned by the Crown and partly held in trust for the Crown,

but does not include a new town or a housing authority incorporated under section 39 of the *Alberta Housing Act*.